SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 97

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 98

MARYLAND PORT AUTHORITY, ET AL., APPELLANTS,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

No. 99

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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[fol. 1525]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

ISA Docket No. 32204

[Title omitted]

Thursday, April 10, 1958.

Met, pursuant to adjournment, at 9:30 o'clock a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCES:

John Henry Lewin, 1409 Mercantile Trust Building, Baltimore, Maryland, appearing for Canton Railroad Company, respondents.

William P. Quinn, 414 Reading Terminal, Philadelphia 7, Pennsylvania, appearing for Reading Company, respondents.

[fol. 1527]

PROCEEDINGS

Exam. Boat: I think we are ready to proceed.

Mr. Foley: I have one preliminary matter. I asked Mr. Bongartz' permission to make this statement. I would like to make it if I have your permission.

I have been asked by the Greater Boston Chamber of Commerce to state this. Mr. Day, who was our traffic witness, and for years Traffic Manager of the Chamber, was called for cross-examination, which was subsequently waived.

When called, he intended to state his appearance and his statement was on behalf of the Greater Boston Chamber of

Commerce, as well as on behalf of the Port of Boston Commission. He did not have that opportunity.

Greater Boston Chamber of Commerce did not therefore have a witness, but would like to adopt as a statement what Mr. Day said.

Exam. Boat: Very well.

Mr. Bongartz: Mr. Examiner, I believe that Mr. Heywood is to be questioned on redirect.

Exam. Boat: I think that was the unfinished business we had to take care of.

Mr. Langdon: Also Mr. Talbott.

Mr. Bongartz: Mr. Talbott, as well.

Exam. Boat: Yes. Would you take the stand, Mr. Heywood, please?

[fol. 1528] Mr. Langdon: We will put Mr. Talbott on first, if that is all right.

Apparently Mr. Heywood's extra copies are on the train that left Philadelphia at 9:55, and are not here yet.

Exam. Boat: Is that agreeable, Mr. Colgren?

Mr. Colgren: Yes.

Mr. Langdon: Mr. Examiner, are you ready to go?

Exam. Boat: I think so.

Mr. Langdon: Mr. Talbott is called, of course, for redirect examination and has prepared in that connection a statement consisting of 23 pages, copies of which are being distributed to counsel on the other side as well as to the reporter, and I would like Mr. Talbott to read this statement.

E. M. Talbott previously duly sworn, resumed the stand and testified as follows:

Redirect testimony.

Mr. Talbott: During the course of my cross-examination, particularly with reference to record pages 1405-1413, 1422-1428, it seemed to me that the methods I used in making The Baltimore & Ohio Railroad-Central Railroad of New Jersey terminal study at New York were not clearly understood and that the representativeness of the periods and/or cost factors developed there were being questioned.

Therefore I will undertake a brief discussion of the [fol. 1529] methods used in making the study, including data which in my opinion shows the periods used and the allocations made to be thoroughly representative.

Yard Switching Study

Special studies were made to develop the yard engine switching minutes applicable to import-export traffic at both Jersey City and at St. George, Staten Island. Each of these studies was arranged well in advance of the study period through conferences with the operating department of the railroad involved.

The study period was from 12:01 a.m., Monday, September 24, until 11:59 p.m., Sunday, September 30, 1956. Competent employees were assigned on a full-time basis to supervise the special yard studies from the time they started until all the data was tabulated.

The study at Jersey City was set up to determine the average minutes per car for yard classification, lighterage pier switching and float bridge switching. Detailed instructions were issued to those designated to supervise the study to assure accuracy.

A special report was designed, one of which was used to record for each yard crew the time spent on each assignment during the entire tour of duty. The starting time and finishing time for each assignment was shown as well as a full description of the work performed. These forms were prepared by yard masters, located in the yard offices from [fol. 1530] which offices the switching orders were issued to the individual yard foremen (conductors). The forms were then carefully checked promptly by the special employes assigned to supervise the studies. The data reported were also checked against the switching orders or switching lists and the switching minutes were consolidated for the various elements of switching for the study week.

The switching study was designed to develop average minutes, separately; for three classes of switching involved in the handling of import and export traffic, i.e., classification; switching service between the classification yard and spotting at the lighterage piers; and similar switching ser-

vices relating to the float operation. The data so developed is as follows:

Type of Switching	Total Yard Engine Minutes	Divisor	Average Number Yard Engine Minutes Per Car
Classification	48,644	11956 loads & empties classified in the classification yard	4.07 Load or Empty
			5.17 Load
Lighterage Pier	6,154	313 loaded cars import & export freight moved via lighterage piers	19.66 Load
Float Bridge	33,380	3824 loaded cars handled via float bridges	8.73 Load

The average minutes per car for classification switching was developed by dividing total yard engine minutes [fol. 1531] involved in yard classification during the study period by the total cars switched in the classification yard, which included import/export traffic.

A special ratio of loaded to empty cars for this traffic was determined because the empty ratio for the total traffic was higher and was not representative of import/export traffic. This ratio was used in adjusting the average minutes for all cars of 4.07 minutes to 5.17 minutes for loaded cars. The yard engine minutes and the number of loaded cars used in developing the lighterage pier switching minutes does not include the domestic cement movement mentioned in my cross-examination since this cement moves over a separate facility which was excluded from our study.

The computation of average yard engine minutes per car for float bridge switching takes into account the number of cars handled over the float bridges in interchange service with the New Haven, Bush Terminal, Brooklyn East Dock,

Jay Street and New York Dock railroads and the time to switch them.

Mr. Welsh: May I ask at this time what is meant by Brooklyn East Dock?

The Witness: I am trying to mention those Brooklyn terminals.

Mr. Welsh: You mean by that, Brooklyn Eastern District Terminal?

The Witness: That is probably what I meant.

[fol. 1532] Mr. Welsh: Might that be corrected?

The Witness: Yes.

No marine service by B&O-CNJ joint pool was required for this latter traffic since such service is supplied entirely by the other interchanging railroads.

The switching study at St. George was prepared under the same principles. The data developed is as follows:

Type of Switching	Total Yard Engine Minutes	Divisor	Average Number Yard Engine Minutes Per Car
Classification	1415	731 loaded and empty cars classified in the classification yard	1.94 Load or Empty 2.90 Load
Lighterage Piers	882	82 loaded cars import and export freight moved via Lighterage piers	10.76 Load
Float Bridge	752	40 loaded cars handled via Float bridges	18.80 Load

The following yard performance data for various periods indicates that the period of the study is representative from the standpoint of volume of cars handled in the respective yards.

[fol. 1533] Yard Engine Hours

Year	CNJ — System	SIRT — System
1953 — per month	29,063	1103
1954 — per month	27,405	1071
1955 — per month	28,321	1030
Average per month, 1953 to 1955, inc.	28,263	1068
1956 — Jan. to Sept., incl., average per month	29,480	1006
September, 1956	27,903	898

Cars Classified

Jersey City

	Total Cars	Engine Hours
1956 — per month	52,229	10,281
1957 — per month	50,120	9,659
Month of Sept., 1956	50,483	9,267
Sept. 24 to 30, 1956	11,956	2,290

Unit costs per yard engine hour for the Jersey City and St. George switching operations were computed and applied to the yard engine minutes previously described to obtain the cost of performing the switching service required for import/export traffic.

From these costs a composite switching cost for the B.&O. & C.N.J. was computed, weighted by the number of tons handled at each operation. (Page 10 of working papers.)

[fol. 1534] The Examiner asked me at pages 1406-1407 of the record for the breakdown of the 47 cent cost per engine minute at Jersey City and the 65 cent cost at St. George. That information follows:

Item	CNJ Jersey City	B&O St. George	Basis
Yard track maint.	$ 1.46	$ 4.65	Av. Mo. cost for 3 years divided by the average yard engine hours for 9 months — Jan. to Sept. 1956 (System figure as reported to ICC in Form A annual reports).

Item	CNJ Jersey City	B&O St. George	Basis
Yard loco. repairs	$ 2.18	$ 2.03	Average monthly costs for year 1955.
Interest on investment	$ 1.25	$ 1.61	Depreciated value of locomotive used.
Taxes	.17	—	Average per month for 1955.
Depreciation	$ 1.46	$ 3.26	Actual for September, 1956.
Crew wages, fuel, supplies, etc. (Accts. 377 to 389)	$21.39	$27.69	Actual costs at JC and St. George for Sept. 1956 for crew wages. Other expenses based on the average cost per engine hour for 12 mos. ending September, 1956.
Cost per engine hour	$27.91	$39.24	
Cost per engine min.	.47	.65	

[fol. 1535] Lighterage Piers

The costs of operating the lighterage piers at Jersey City and St. George are summarized on page 6 of my working papers. These data are based on September, 1956, operations and expenses except for the pier maintenance costs. The pier maintenance shown is the average monthly cost for a three-year period. That period for the C.N.J. is 1953 to 1955, inclusive; and for the B.&O., 1952 to 1954, inclusive.

I might say that the reason those periods are different for the years 1952 to 1954, the B&O maintained a record of the cost of maintaining all structures. As an economy measure, that was discontinued after 1954.

The composite average unit cost for the expenses indicated were developed summarized as follows:

Maintenance	$ .38
Taxes	.34
Depreciation	.07
Return	.11
Steam lighter expense	.16
Trucking in lieu of lighters	.95
Handling at steamship piers	.90
	$2.91
Storage collected (credit)	.11
	$2.80

[fol. 1536] Exam. Boat: Are those amounts per ton?

The Witness: Yes, sir.

Exam. Boat: Thank you.

The Witness: These unit costs were used in the development of the costs shown in my summary working paper, sheet 2.

I was asked at pages 1414-1415 of the record for the number of tons trucked in lieu of lighterage. That factor was included in my costs on the basis of the bills paid to the trucking companies for services actually rendered during September 1956, which for Jersey City and St. George totalled $39,569.

The trucking costs were divided by the number of tons handled by the lighterage pier stations to obtain the cost of $0.95 per ton as shown herein. The actual number of tons trucked to and from Jersey City and St. George during September amounted to 7,064 tons or an average cost of $5.60 per ton so handled.

The total tons used in the calculation of the lighterage pier costs, 41,465 tons, represents the lading of the cars actually loaded or unloaded during the month over the

lighterage pier as developed from the records at the lighterage piers. This figure does not include the domestic cement movement previously mentioned for which the costs also have been excluded.

I was asked at pages 1405 and 1410-1411 of the record to reconcile the 56,404 tons of lighterage freight shown on [fol. 1537] page 38 of my working papers with the 34,946 tons shown on page 8 of the working papers. That reconciliation follows:

	Tons
Total import and export traffic handled during September, 1956:	
Via Jersey City	34,946
Via St. George	6,775
Total	41,721
Less: Via trucks and docks	8,873
Total lightered—via lighterage station	32,848
Total lightered—via pier stations	692
Total domestic cement	23,963
Total from storage	499
Total lightered	58,002
Less: Handled by Spencer Steam lighter	1,598
Total lightered by B&O-CNJ	56,404

The following summary of tons handled at the lighterage piers of the C.N.J. and B.&O. at Jersey City and Staten Island for the year 1956 by months is indicative of the representativeness of the study period used to develop lighterage pier unit costs:

[fol. 1538]

Total Tonnage Handled at Lighterage Piers

Jersey City and St. George

Year 1956

Month	Tons	
January	79,611	
February	69,158	
March	69,825	
April	79,390	
May	82,624	
June	79,971	
July	61,673	
August	61,194	
September	67,945	
October	81,213	
November	64,974	
December	77,047	
Average		72,886
Percent September to average		93.2%

The tons shown for September 1956 in this listing differ in amount from the tons lightered just referred to because the tons here represent tons actually handled. That is, at times for operating reasons it is necessary to handle some tonnage more than once. In the preceding tabulation each such handling on the pier is counted. In the cost study, however, the tons moving over the pier were counted but [fol. 1539] once, which in effect spreads the cost of any extra handlings which might have been necessary in September, 1956, over all tons going over the pier. It was impractical to compute the costs in any other way and this, in my opinion, constitutes a perfectly sound basis. A month to month tabulation of net tons going over the lighterage pier, as distinguished from tons handled, is not available.

Marine Costs

The floating operation, involving both the CNJ with its terminal at Jersey City and the B&O with St. George as its terminal is handled by a pooling of CNJ and B&O floating equipment. The pooled tugs, floats and lighters are interchangeably used for the operations of either company. CNJ and B&O equipment is initially assigned to the pool on the basis of anticipated requirements of each company. Any excess or deficit in the units of equipment furnished to the pool by either company in any one month is adjusted in the following month.

Both CNJ and B&O import and export traffic is transferred from cars to lighters or vice versa at the jointly operated CNJ lighterage piers at Jersey City. A substantial portion of the B&O import tonnage is handled through the B&O lighterage pier at St. George, Staten Island, N.Y.

A special study separating the tug time (hours) between towing car floats and towing lighters was made under my supervision, and covered the period September 24, 1956, to [fol. 1540] September 30, 1956. Special attention was given to the preparation of the tug logs during the week of the study which resulted in the following allocation:

	Hours	Percent
Towing car floats	711	63.88
Towing lighters	402	36.12
Total	1113	100.00

These percents were used in my cost study in dividing tug and other common marine expense between car float and lighter expense. The relation of cars floated to cars lightered for the study week compares favorably with similar data for the whole month of September 1956, and for the entire year 1956 as shown below:

	Cars Floated		Cars Lightered		Total	
	Number	Percent	Number	Percent	No.	Percent
Week—Sept. 24-Sept. 30, 1956	2,136	83.27	429	16.73	2,565	100.00
Month—Sept. '56	8,732	84.55	1,596	15.45	10,328	100.00
Year—1956	102,779	83.59	20,176	16.41	122,955	100.00

The various items of marine expense are summarized on page 9 of the work papers. As I stated, tug boat expense and other expenses common to both floats and lighters was divided between floating and lighterage on basis of the percents determined in the one week study. The other items were taken from the records representing costs for month of September, 1956. The floating equipment maintenance [fol. 1541] was based on the monthly average for the three years 1954-56, inclusive.

The total marine expense incurred during September 1956 of $350,142 was allocated $143,184 to floating and $206,958 to lighterage. A total of 8732 loaded cars were handled on car floats to and from Jersey City and St. George during the month, resulting in an average cost of $16.40 for each loaded car floated. A total of 56,404 tons were transported in lighters to and from Jersey City and St. George during the month, resulting in an average cost of $3.67 per ton lightered.

The unit cost of $16.40 per loaded car floated was used in the development of the cost incident to handling the import and export freight via the pier stations in New York, as recapped on page four of the work papers.

The unit cost of $3.67 per ton for lighterage freight was used on page 2 summary.

Data relating to the CNJ-B&O marine operations, by months for year 1956 follow:

	Traffic receiving a marine movement — Cars	Tug Hours
January	10,298	4,744
February	9,761	4,445
March	10,299	4,876
April	10,526	4,640
May	10,574	4,822
June	9,958	4,692
July	9,108	4,297
August	10,460	4,883
September	10,157	4,541
October	11,528	4,932
November	9,953	4,565
December	10,333	4,673
Average per month	10,246	4,676

[fol. 1542] There seems to be some misunderstanding as to the nature of the C.N.J.-B.&O. pooled arrangement for marine operation (Record page 1422-1426). As stated previously, the equipment—tugs, lighters, and car floats—are used interchangeable for the traffic of both roads. B.&O. equipment may be handling C.N.J. traffic one trip and B.&O. traffic the next, or the freight may be a combination of both road's traffic. The same is true of the C.N.J. equipment. Data are not maintained to permit an accurate separation of marine costs as between the B&O and CNJ. My costs are the composite for both companies.

One line of questioning at pages 1424-1425 of the record seemed to indicate that counsel thought the B.&O. had excess marine equipment at New York. The fact is the pooled marine operation had difficulty in handling the traffic with the equipment available during a part of 1957 and new equipment is on order. It is necessary to keep sufficient equipment on hand and ready to handle peak periods which may occur within each week or each month. In addition, two days' free time is permitted on lighterage equipment which reduces its effective utilization and makes the overall operation more expensive.

New York Pier Station Costs

It was necessary to compute an additional category of cost on import/export traffic because some of it moves in car floats from Jersey City to New York pier stations and then is moved either by lighter or truck to the steamship pier.

[fol. 1543] The unit cost per ton for this pier station operation of $9.01 for general carload traffic, and $10.35 for carload forwarder traffic was based on a special study made for the period August 13, 1956, to August 19, 1956. This study provided a breakdown of the station costs between the various types of traffic handled over each pier including general carload traffic, carload forwarder traffic and less-than-carload traffic. Platform labor costs were separated on the basis of an actual time study and other costs were allocated from basic records and accounts (see pages 4 and 13 of working papers). These unit costs were

applied to the import/export traffic which moved in this manner during the month of September, 1956.

I might say those costs of $9.01 and $10.35, as shown in the working papers include the labor cost plus all other costs at these pier stations, so it could be assigned maintenance, light, heat and rent.

During the year 1956, a total of 36,325 cars of 358,232 tons of traffic was handled through pier stations, or an average of 3,027 cars and 29,770 tons per month. During August 1956, 3011 cars or 31,134 tons were so handled. During the week of the study, August 13, 1956 to August 19, 1956, 729 cars and 6,527 tons were handled.

Reference was made in my cross-examination at pages 1407-1408 and 1425-1426 to bulk cement which receives a [fol. 1544] lighter movement through the CNJ-B&O lighterage piers at New York. This cement is domestic traffic moving in covered hopper cars and is discharged into lighters at a separate pier facility. None of the costs applicable to this traffic is in any way included in the costs I have assigned to import/export traffic, although these cars were included in the divisor used to compute average switching minutes in the switching study and to divide the marine expense between lighters and floats. When I said in my testimony that the handling of cement was more economical than other lighterage traffic generally, I was referring to the unloading only, which cost is no way included in my study. This cement, as I have stated, moves in covered hopper cars and is unloaded into special lighters by means of a chute arrangement. The cement which is costed in Mr. Heywood's Exhibit 50A (JLH 6) is an export movement which moves in bags in box cars.

I was asked at pages 1415-1418 of the record whether Mr. Heywood had included in the composite study the costs for B&O and CNJ traffic trucked in lieu of lighterage. That cost is included in the unit costs shown on page 1 of my working papers and these costs were incorporated intact in Mr. Heywood's composite study for the three roads.

At pages 1428-1429 of the record counsel, in questioning me, compared tonnage lightered at Baltimore of 3,555 tons with a figure of 6,700 tons of B&O tonnage supposedly [fol. 1545] lightered at New York. The 6,700 tons is only

that B&O lightered tonnage which moves via the B&O, St. George, Staten Island. The marine movement is performed by the pooled CNJ-B&O marine equipment. This tonnage is not by any means the total B&O tonnage at New York, let alone the total handled by the joint marine operation.

An attempt was made during my cross-examination to compare the cost per ton for lightering freight at Baltimore with similar figure for New York (Record page 1428). There is no comparison between the operations at the two ports.

The B&O operation at Baltimore is handled by one tug working 8 hours per day, 5 days each week. For two to three days per week, when the banana boats are not unloading, the tug boat is active only about half of the day. Due to the small number of lighters to be towed, it would be a rare occurrence at Baltimore when more than one lighter is towed at a time. Whereas in New York multi-tows of lighters—often four or five at a time—is the rule.

Duri[illegible] September of 1956, only 5.4% of the import and export traffic of the Baltimore & Ohio and Western Maryland at Baltimore received a marine movement, whereas at New York 100% of the import and export traffic received either a marine movement or a truck handling in lieu of lighterage.

The entire marine movement, as between the railroad and steamship companies in Baltimore Harbor, could physically be eliminated and all transfers handled by existing rail [fol. 1546] connections. Consideration is now being given to putting such practice into effect which would eliminate entirely the marine expense at Baltimore.

I was asked some questions at pages 1398-1404 of the record as to the size and capacity of the Jersey City lighterage yard relative to its use. The capacity of the lighterage yard is approximately 1200 cars, or a working capacity of about 800 cars. The limits of the yard are governed by peak periods which at times average between 150 and 200 cars per day. In addition to the cars received and dispatched daily, sufficient space is required to handle storage, some of which traffic is unloaded on the ground and some of which is held in the cars for storage. During September,

1956, the highest number of cars at one time in the yard under storage was 179.

When it is considered that import-export traffic is entitled to seven days' free time, exclusive of Saturdays, Sundays and holidays, the lighterage yard is not too large. In September, 1956, the car detention in the lighterage yard averaged 5.24 days. During World War II, because the yard was congested, all exports were handled under a permit system so as to avoid, as far as possible, total embargoes, which, however, became necessary from time to time.

I might add to this that we had a situation report prepared for the month of September—the month of March, rather, 1958.

These figures were not available for March, 1956. This [fol. 1547] record shows at the present time that there is in ground storage in this particular yard 839 cars, mostly steel, I understand, and there are 26 box cars in storage on the piers.

On the rails, there were 216 cars—that is, on the 31st, and those figures for the 31st are a fair average for the whole month. In other words, the storage—the cars in the yard ranged from a low of 153 during the month, in one day, to a high of 258.

By Mr. Colgren:

Q. Right there, Mr. Talbott, if you please; is that all export or import traffic in those cars?

A. Yes, it is all traffic to be handled through the lighterage piers. It might not all be export/import. It is all going through the lighterage piers and over the lighterage platform in the marine service.

Q. Mr. Talbott, that yard is immediately adjacent to a coal-dumping facility, is it not?

A. It is.

Q. Are the excess coal cars awaiting dumping ever put in that yard?

A. They are not. The yard is only used for traffic which requires a marine movement over the lighterage piers—a lighterage pier movement.

Mr. Colgren: I think we will pick this up a little later on, Mr. Examiner, if you please. I just wanted to get that question there.

[fol. 1548] Exam. Boat: All right.

Mr. Langdon: Are you through?

The Witness: Yes.

By Mr. Langdon:

Q. We were requested to supply for the record the number of tons of import/export freight handled by the B&O and the Central Railroad of New Jersey for the year, 1956. Do you have those figures?

A. I do. They are, for the year 1956, for the B.&O. Railroad, 318,145 tons.

Exam. Boat: That is export and import?

The Witness: Yes, sir.

By Mr. Colgren:

Q. What is the figure?

A. 318,145. For the Central of New Jersey, 581,333 tons, for a total of 899,478.

By Mr. Langdon:

Q. What is the source of these figures?

A. Witness Mollman's traffic study.

Q. What import/export tonnages were covered by your cost study, Mr. Talbott?

A. We took into account the actual tons of import/export traffic which we actually received at the lighterage pier for unloading or actually loaded at the lighterage pier during the month of September, and those tons amounted to 43,500 tons.

Those tons also included the floating and trucking in lieu of lighterage.

Q. Were there other export/import tonnages handled [fol. 1549] through New York in September, 1956, which were not used or included in your cost study?

A. Yes. There was a movement of export scrap iron and

import ores at Central Railroad of New Jersey, Pier No. 7, Jersey City.

Q. Why did you not include the cost of export scrap iron and import ores moving over the Jersey Central pier in your study?

A. Well, the export scrap iron and ores moving over Pier 7 are handled direct between ships and cars. These are the only commodities handled in this manner on this pier.

Q. Was it short haul traffic?

A. The ore was all short haul traffic moving to Carteret, Palmerton, Pennsylvania, and west side New Jersey.

The scrap similarly moved from nearby points in New Jersey, not to differential territory.

By Mr. Langdon:

Q. Then why, Mr. Talbott, where Mr. Heywood's exhibits —wherein his exhibits have you New York terminal costs, including cost of harbor marine services, assessed against the cost of import ores, in his Exhibit No. 50-A?

A. My investigation indicated that the import ore—some import ore is handled via lighters. My understanding further is that if there is as much as 2,000 tons to be unloaded of ore, the ship will be transferred to this Central New Jersey pier for handling.

Occasionally there may be a shipment transferred there [fol. 1550] with 1500 tons to be handled.

There is other traffic handled, smaller traffic that is handled under the tariff.

These smaller tonnages, of course—the marine service has to be provided for them, and it is my understanding that the New York carriers lighterage tariff provides free lighter service on commodities such as ore when received in lots of 50 tons or more.

The tariff referred to is Rule A-25, Item 3621, note A of Boin's Tariff, ICC-A, 1108.

Mr. Langdon: I wonder if at this point we could have an understanding the parties are free to refer as if in the record to the lighterage tariff applicable at New York?

Mr. Colgren: Yes.

Mr. Langdon: Is there any objection to that?

Mr. Colgren: No. But can we include all the ports?

Mr. Langdon: I see no objection.

Mr. Colgren: New York, Philadelphia, and Baltimore, and I am not excluding Newport News and Norfolk.

Mr. Langdon: And Boston.

Mr. Colgren: Yes.

Mr. Langdon: If there is any.

By Mr. Langdon:

Q. Now, Mr. Talbott, there was some suggestion during the course of the cross-examination at the last hearing for duplication in our total costs, by virtue of the marine costs [fol. 1551] at New York, which were included in our special terminal costs, also being included in the Form A average costs.

Have you any testimony on that?

A. At the previous hearing, it was acknowledged by Witness Heywood that Form A average costs for the eastern district, which in our exhibits were tacked to the line haul cost; that is, tacked to the special terminal cost as separately compiled for New York, Philadelphia and Baltimore, contained a pro rata share of special cost, and to that extent there was some duplication.

Now, at our request Dr. Ford Edward, who was retained in this litigation by the Maryland Port Authority, undertook to eliminate from Form A costs all elements which represent marine expenses, and he has advised me this can be accomplished by deducting $1.13 from the Form A out-of-pocket terminal expense per car (box cars) as included in our studies, and $1.23 per car for the comparable terminal costs for other types of cars.

Mr. Myskowski: Could you give those figures again?

The Witness: $1.13 for the box cars, and $1.25 for other types of cars.

Also, $.0034605 per car mile—that is dollars, from the Form A out-of-pocket haul expense (box cars), and for other types of equipment as follows:

[fol. 1552] $.0043883 per car mile for refrigerators.

The work sheets separately for these figures are presently

being duplicated and will be given to the Examiner and counsel for the other side tomorrow.

The average minutes per loaded cars under form A for eastern district are 27 minutes for box cars and 30 minutes for other types of cars.

By Mr. Langdon:

Q. Mr. Talbott, will you give the scrap iron tonnages and also the ore tonnages that were handled over that Jersey Central facility?

A. For the month of September, 1956, the scrap iron tonnages handled over Pier 7 at Jersey City is 14,288 tons.

The ores imported handled during September, 1956, amounted to 13,743 tons.

Mr. Langdon: I think that is all, sir.

I think Mr. Talbott's voice is about to go. Could you let him have about five or ten minutes? Do you mind?

Exam. Boat: We might recess for a short time, if that is satisfactory, or—

Mr. Colgren: I have in mind, Mr. Examiner, there is quite a bit of new data being submitted to us here, and I would like to suggest this procedure. That if Mr. Talbott is through with his redirect, we could hear Mr. Heywood and then perhaps if I may have a reasonable time, a couple of hours or more, depending upon what Mr. Heywood has to [fol. 1553] say, to look over this new data, for purposes of cross-examination.

Mr. Langdon: That is all right.

Exam. Boat: That will be satisfactory to me. Would you want that after you—

Mr. Bongartz: I didn't get part of it—

Exam. Boat: Would you want, Mr. Colgren, after you finished with Mr. Heywood—

Mr. Colgren: I thought it would be well to proceed with our direct and take our recross all in one lump, after we have had a reasonable period to digest what has been presented to us.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: We will let Mr. Talbott stand aside, then, and Mr. Heywood can take the stand.

(Witness excused.)

J. L. Heywood being previously duly sworn, resumed and testified as follows:

Redirect testimony.

By Mr. Bongartz:

Q. Mr. Heywood, before proceeding with your redirect, did you have two errata statements to take care of changes which should be made in your Exhibits JLH-5 and JLH-6?

A. Yes, sir.

Mr. Bongartz: I think these statements, sir, are self-[fol. 1554] explanatory. They make reference to the pages and the group numbers shown on Mr. Heywood's exhibits, which I have mentioned, and involve the few changes which are shown in the statement, and unless some further explanation is required, I would suggest that these statements speak for themselves and we will proceed.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

These errata sheets to the tabular matter which we identified as Exhibit No. 50-A may be identified as Exhibit No. 50-B.

(Protestant's Exhibit No. 50 B, Witness Heywood, was marked for identification.)

Mr. Colgren: I wonder if we can number these pages so we can have three pages for Exhibit No. 50-B?

Mr. Bongartz: The single sheet would be page one.

Exam. Boat: Yes, and the others in order, two and three, striking the page two on the second group. That would now be page three.

Mr. Bongartz: May these be received in evidence at this time?

Exam. Boat: I don't think I have received Exhibit No. 50-A yet.

Mr. Bongartz: I thought we had. The record is a little [fol. 1555] confusing in that respect. I think it shows it is received, but if you want to do it—

Exam. Boat: Out of an abundance of caution, I think we will do it later.

Mr. Bongartz: All right.

By Mr. Bongartz:

Q. Mr. Heywood, there have been some questions directed to the methods you have used in applying your cost study to the data supplied to you by Mr. Clark as a result of the switching study which he conducted in the four New York yards of the Pennsylvania Railroad. For clarification, will you please again explain the data which you received and the methods which you used in applying that data to your cost study?

A. Mr. Clark conducted a switching study which he has described in this record. Basically, what he did was to study the handling of all cars moving through the four yards which are located in the New York area during the period of the study. He developed the average locomotive minutes per car, for loads and empties, by elements of service.

With specific reference to the import/export cars moving through these four yards, Mr. Clark determined the actual elements of service required in the movement of the import/export cars and the total number of times that these cars received each element of service. As a result of his study of these cars, he was able to supply to me the total elements [fol. 1556] of service accorded these cars and the average locomotive minutes per car for each element of service.

My working sheets disclose these average minutes per car handled in each of the yards and/or locations and hence, more than one average time appears for some of the elements. I then took the average minutes developed for each element of service and multiplied that by the number of elements of that particular service accorded import/export cars in the yards in which that particular average had been developed. The total of these multiplications produced total

locomotive minutes for each element of service accorded import/export cars in the study week.

A study of the yard costs was made for the same period, which was then reduced to a cost per locomotive minute. This included all costs including real estate taxes and other costs sometimes referred to as fixed costs.

The total minutes by class of service required to move import/export cars, both the loaded and empty, through the New York terminal were then multiplied by the cost per locomotive minute to produce total costs by class of service applicable to import/export cars during the study week. The total cost by class of service applicable to these cars was then divided by the number of loaded import/export cars included within the study. This produced the cost per loaded car of $24.10 shown in my work papers.

[fol. 1557] Q. Mr. Heywood, one of the elements of service which has been referred to in your work papers is "industrial switching". Will you please explain what specific types of service were included within this category in the figures supplied to you by Mr. Clark?

A. As I indicated to Mr. Colgren under cross-examination, this broad category in Mr. Clark's study includes switching to industries in the area under study. It also includes, however, switching to docks, wharves, piers, float-bridges, trestles, elevators and the stock yards. The total minutes consumed in performing all of the service designated "industrial switching" were used in developing my unit cost per locomotive minute which I have just explained.

But when developing the minutes of industrial switching chargeable against import/export cars, I have used only those portions of the total industrial switching category which represent service actually accorded the import/export cars during the study week.

The time appearing in my work sheets under the heading "industrial switching" did not include any time spent in switching domestic freight to industries or other types of industrial switching not actually performed on import/export traffic.

Q. Will you please explain the method used by you in producing the costs which are referred to in your working [fol. 1558] sheets as "float-bridge" costs?

A. First, we studied the cost of maintenance and operation of the float-bridges at Harsimus Cove, which are the only float-bridges handling import/export traffic, to produce a cost for the month of September, 1956. This cost included such items as real estate taxes as well as other elements of costs. I divided this float-bridge cost by the total cars over the bridges to produce a cost per car.

This cost per car was then multiplied by the total cars (loaded and empty) over the float-bridge destined for trucking in lieu of lighterage to or from Desbrosses Street Station, which was 889 cars, to and from West Twelfth Street Station (Piers 49 and 50) which was 155 cars, and cars floated to or from steamship piers, which total 114 cars. The sum of the costs arrived at gave me the total float-bridge costs for import/export cars moving over the float-bridge.

The float-bridge cost applicable to trucking in lieu of lighterage to and from Desbrosses Street and West Twelfth Street Stations was then combined, the total being $2,293.04 (excluding 6% return on investment). This total float-bridge expense for trucking in lieu of lighterage traffic was then carried to the summary sheet.

Due to what now appears to have been a misunderstanding by the Baltimore & Ohio Railroad of what figures they had available, in order to make a composite showing we [fol. 1559] found it necessary to state this cost on a tonnage basis. To accomplish this, the actual tonnage of the loaded cars was abstracted from the station records to determine the tonnage used as a divisor.

The float-bridge cost applicable to carfloat traffic to and from steamship piers in the amount of $250.39 (excluding 6% return on investment) was then carried to the summary sheet on a car basis. This cost represents the total cost over the float-bridges for 54 cars which was the loaded portion of the 114 cars heretofore mentioned.

Q. Will you please explain the method used by you in producing the costs which are referred to in your work sheets as "Marine Costs"?

A. First, we studied our marine operation in New York Harbor for a seven-day period beginning September 10, 1956 and terminating September 17, 1956. This study con-

sisted of analysis of the tug logs and the carfloat and lighter logs to produce the productive service minutes of marine equipment by type of equipment; i.e., tugs, carfloats, lighters, etc. This analysis also produced the time consumed for any particular movement and disclosed the points between which such movements were made.

With respect first to traffic moving on carfloats, a further analysis was made to determine the time spent in traffic moving from and to particular stations, i.e., Desbrosses Street, West 12th Street and steamship piers.

[fol. 1560] The tug time allocated to each of these types of traffic was then stated as a percent of total tug time during the study week. Analysis of the carfloat logs developed comparable information for carfloats. The expenses were developed by classes of equipment and were then allocated to the import/export traffic on the basis of the above stated percents. Where tug or carfloat hours were not the proper basis for allocation of expenses such as in the case of boatmaster's force under Account 408, other bases such as dispatchments of carfloats were used.

The allocation of costs as stated above produced total expense applicable to traffic moving between Harsimus Cove float-bridges and the stations enumerated on the other hand. This total cost for the month of September was then divided by the total cars, Desbrosses Street—3,253; West 12th Street—4,662—to produce a cost per car handled. This cost per car handled was then multiplied by the total cars (loaded and empty) for Desbrosses Street—889; and for West 12th Street—155—to produce the total marine cost applicable to the trucking in lieu of lighterage traffic.

With respect to the carfloat traffic between Harsimus Cove float-bridge and the steamship piers (114 cars), the total cost was wholly applicable to this type of traffic. At this point I would like to state that the marine costs applicable to trucking in lieu of lighterage was carried for-[fol. 1561] ward to the summary sheet in the same manner as float-bridge costs applicable to trucking in lieu of lighterage and for purposes of combining the study with the other railroads was again converted to tonnage basis.

With respect to import/export lighterage traffic, the analysis of tug time produced minutes applicable to import/export lighterage of freight between Jersey City piers and Greenville piers and steamships and/or steamship piers. Lighter time consumed in the movement of import/export traffic between these points was determined from an analysis of lighter logs. These minutes were then stated as a percent of the total tug and total lighter minutes separately during the study week. Costs for the month of September, 1956 were then allocated on the basis of these percents where applicable. Other bases such as dispatchments of lighters was used in the allocation of costs such as boatmaster's force.

The total costs "for Jersey City Lighterage" and "Greenville Lighterage" were then combined to produce a total cost for the lighterage of foreign freight in the month of September, 1956. During the study week an analysis was made from the lighterage agents' records which produced the freight tonnage lightered during the study week. From this analysis, we were able to determine the tonnage and the type of rail equipment as distinguished between open cars and box cars, in which the tonnage moved while on the railroad. The marine lighterage costs were then ap- [fol. 1562] portioned to the two classes of freight, i.e., box car and open car. These costs were then carried to the summary sheet and stated on a tonnage basis.

Traffic which moved in other types of marine equipment such as grain barges was priced out in much the same manner as I have described for lighters.

Q. Have you now computed the difference which would be made in your unit costs if you had stated the float-bridge costs and marine costs applicable to trucking in lieu of lighterage on the basis of cars rather than tons?

A. Yes.

Q. What is the result of that computation?

A. The result of that computation is that it would have the net effect of increasing my cost on a car basis from $35.43 to $41.01, or a net increase of $5.58 per car. It would have the effect of decreasing the cost on a tonnage basis from $9.45 per ton to $9.23 per ton. A net decrease of $.22 per ton.

These costs stated at the January 1, 1958 cost level when applied to the cars in my study have the overall effect of increasing the per car cost for cars with an average load of 6.25 tons to and including cars with an average load of 24 tons. It has the effect of decreasing my costs on cars with an average load of 26 tons to and including cars with an average load of 56 tons. The increased cost ranges from 4.5% on a car with an average load of 6.25 [fol. 1563] tons and diminishes to an increase of .1% on cars with an average load of 24 tons. The decrease amounts to .1% on cars with an average load of 26 tons and progresses to an increase of 1.2% on cars with an average load of 56 tons.

Q. Mr. Heywood, you have available your work papers underlying these figures you just testified to?

A. Yes, sir.

Mr. Bongartz: We will be glad to furnish those, Mr. Examiner, to you and to Mr. Colgren at the recess.

Exam. Boat: Very well.

By Mr. Bongartz:

Q. In spreading your costs in the yards there has been mention made that certain icing costs were included. Will you state what the net effect of including these costs was?

A. The icing amounts to $.10 per car.

Q. Mr. Heywood, would you explain how you arrived at the maintenance cost for marine equipment in your study?

A. First, we took the total marine maintenance costs at New York by classes of equipment for the year ending September 30, 1956, which aggregated $2,882,238, including payroll taxes, and applied one-twelfth of that figure to arrive at a maintenance cost for the month of September, 1956.

Q. Have you compared the total number of cars included in the yard study week with the average week in the same area for the year ending September 30, 1956?

[fol. 1564] A. Yes. Our records show for the year ending September 30, 1956, 1,474,086 cars dispatched, which is an average per week of 28,347 or 3.2 percent less than the 29,281 shown by the study.

Q. Now, Mr. Heywood, one more question. Have you compared the total traffic which received lighterage service at New York during your study work for the average week, 1956, for the same traffic?

A. Yes. The total traffic for our study week was 20,276. The average week in 1956 as determined from lighterage agents records was 18,340. Hence the tons used in our study to produce unit costs were 10.6 percent above the average week.

Mr. Colgren: May I inquire whether investigation has been established whether we can be supplied the Bureau of Budget report form that was requested of the Pennsylvania Railroad?

Mr. Bongartz: Yes. Our investigation shows that we do make a report to the Army Engineers of the type mentioned by Mr. Colgren.

The report, however, is made on a yearly basis, without in the meantime segregating the months. We are engaged at the moment in separating out from our papers for the month of September.

In addition, Mr. Colgren asked for information regarding lighterage as well as car floats. His original request pertained only to car floats, you will recall, and since the [fol. 1565] last hearing he wrote a letter asking that we also include lighterage information.

That information, as I understand it, is not given on the type of form that Mr. Colgren has referred to, and we are trying to locate just how it was given. At the moment, I would say that we would be prepared to furnish that information to Mr. Colgren, together with any necessary explanation, next week.

Mr. Colgren: Well—

Mr. Bongartz: I might add for the record, and this was mentioned before—I would assume in giving this information to Mr. Colgren, if we later find it advisable to make a similar request of him for the roads that he represents that he would be willing to supply such information to us on account of those roads.

Mr. Colgren: I see no objection to that. As I pointed out previously, I do not see the necessity—

Mr. Bongartz: Maybe there will be no necessity, Mr. Colgren. I just wanted to include that in my statement.

Mr. Colgren: Yes, certainly. If there is a need or purpose for the information, we will gladly supply it.

Now, as to the lighterage report that I asked for, I subsequently to the last hearing discovered that the same report which reports the movements of car floats within the New York Harbor to the Corps of Army Engineers is made [fol. 1566] out for the lighterage movements and covers the movements of barges as against car floats.

And I did, by letter, ask Mr. Bongartz and Mr. Langdon if they would supply that additional report.

It is a separate report, but made on the same form.

Mr. Bongartz: If I may interrupt you there, Mr. Colgren. That is one of the difficulties we have run into. We do not, as far as lighterage is concerned, make these reports on that same form.

Mr. Colgren: I am only going by our own experience.

Mr. Bongartz: I know you are going by your own experience, but I did want to make it clear in our case, as you will see when you get this information, that it is not on the same form.

Mr. Colgren: Mr. Examiner, I would like to indicate that I now have copies of the reports made by the New York Central, on this Budget Bureau form, and I would be glad to show these to the other counsel, in order that they understand what the reports are, and that there is no confusion as to what reports I am referring to.

I have one here that covers the movements of barges in the New York Harbor area, another for grain boats, another for—that is, that purports to cover steel lighters, on which we on the New York Central had nothing to report.

But apparently those are the classifications for reporting.

[fol. 1567] That is in addition to the report covering car floats, which is the first report that I had asked for.

Yes, as indicated on the record previously, these are the Budget Bureau No. 40-R 268.6 Form.

Mr. Bongartz: Federal Government Budget Bureau.

Mr. Colgren: That is right.

Mr. Bongartz: We would be glad to have any assistance that Mr. Colgren wants to offer us in this regard.

Mr. Colgren: Down in the left-hand corner of these forms, there is additional designation RBH Form 1—1 Dec. '54—Department of the Army, Corps of Engineers.

Now, as I indicated, Mr. Examiner, these are apparently harbor movement reports supplied to the—

Mr. Bongartz: Could the record show, Mr. Examiner, that under date of April 7th, there was transmitted to Mr. Colgren, with copies to you, certain sample material in connection with Mr. Clark's switching study?

Exam. Boat: That may be shown in the record.

Do you think you might want the time you had in mind?

Mr. Colgren: Yes. In order that Mr. Heywood might be excused this afternoon. Right now we do not anticipate too much of him, but I wonder if we can have until two thirty?

Exam. Boat: Would that give you time enough?

Mr. Colgren: I think so, for Mr. Heywood.

Mr. Langdon: What do you mean? You want Mr. Tal-
[fol. 1568] bott back tomorrow?

Mr. Colgren: It may develop we have only one or two questions of Mr. Heywood and then we could proceed with Mr. Talbott. But I don't know how long that would be.

Exam. Boat: Is that satisfactory?

Very well, we will recess until two thirty o'clock this afternoon.

Mr. Bongartz: Mr. Examiner, could the record show I have handed to Mr. Colgren and to you the work sheets I referred to in the course of Mr. Heywood's redirect?

Exam. Boat: That will be done.

(Whereupon, at 10:55 o'clock a.m., the hearing in the above-entitled matter was recessed until two-thirty o'clock p.m. on the same day.)

[fol. 1569] AFTERNOON SESSION 2:30 p.m.

Exam. Boat: Come to order, please, gentlemen. We will resume now.

J. L. HEYWOOD being previously duly sworn, resumed and testified as follows:

Recross examination.

Mr. Colgren: Are we ready, Mr. Examiner?
Exam. Boat: Yes.

By Mr. Colgren:

Q. Mr. Heywood, on your redirect examination, you indicated that in connection with industrial switching you used only the locomotive minutes of industrial switching which are chargeable against import/export cars.

I think you stated it that you used only those portions of the total industrial switching category which represents service actually accorded the import/export cars during the study week.

Can you tell me the elements which are ascribed to export/import traffic—the switching elements?

A. Switching to the float bridge, to the piers, on the Jersey side, to the aprons of the piers to load the lighters.

Q. Is that the local list, Mr. Heywood?

A. No, you can go further, if possible, to the grain elevators, to the stock yards, the trestles, coal trestles, according to what is happening—if it is import or export traffic that is being hauled there, and called industry shipping.

[fol. 1570] Q. Now, Mr. Heywood, I think next you spoke about your float-bridge costs. First you discussed the Harsimus Cove float-bridges and you indicated, I believe, that those were the only float-bridges handling import-export traffic.

The total, stated on your work sheets, of cargo moving over those float-bridges at Harsimus Cove is indicated as 16,714 for the month of September.

A. Yes, sir. That is right.

Q. Against those 16,714,715 cars for the month of September, you charged allocated costs for the month of September for your Harsimus Cove bridges. Is that correct?

A. We allocated the costs of the total cars, yes.

Q. And that is for the month of September?

A. That is right.

Q. I wonder if it would be—rather, let me put it this way.

At no place do we find the total costs for the year 1956 in these figures.

A. No, we work on the month of September in our entire cost set-up, in the sense our maintenance of course covered a period of a year, broken down to a month.

Q. I believe that we have previously asked you to supply the total maintenance costs for the year 1956.

Mr. Bongartz: That was maintenance of floating equipment, was it not, Mr. Colgren? That is what Mr. Heywood gave us this morning in his redirect testimony, if you will [fol. 1571] look at page seven.

By Mr. Colgren:

Q. Well, what I would like to have for a matter of check, Mr. Heywood, would be the annual figure for anything that is allocated from an annual basis.

A. Well, that is true of the maintenance of the floating equipment. But on the float-bridges it is my recollection that we worked on the month of September.

Q. Do you have any figures with you which would indicate the yearly figure from which you allocated this monthly breakdown or maintenance?

A. For the float-bridges?

Q. Yes.

A. No, I do not.

Q. Could I arrive at that figure by multiplying the figures given here by twelve?

A. No, I would not say that was the actual figure. That would be a fair estimate.

Q. Mr. Heywood, I am quite sure I asked for the number

of cars for 1956 going over the Harsimus Cove float bridges. I just wanted to reaffirm that on the record. I thought we—

A. I thought we gave you those in the letter to—we gave you under date of March 19th the number of cars over the float bridges at Harsimus Cove to be 16,679.

Q. Is that for the year, Mr. Heywood?

A. No, that was for the switching study period.

[fol. 1572] Q. I am speaking now of your Harsimus Cove bridge costs.

You show for the month of September, 1956, a total number of cars over the bridges as 16,714.

If my memory serves me correctly, I had requested of you, either by letter, or on the previous hearing, the total for the number of cars for the entire year, 1956.

Mr. Bongartz: Have you got that letter in front of you, Mr. Colgren, under date of March 19th—it is a letter to Mr. French.

Mr. Colgren: No.

The Witness: We gave you a figure, in the answer to it for the year; 211,837.

By Mr. Colgren:

Q. How many of those, Mr. Heywood, are export/import cars?

A. I don't know. We told you at the last hearing, Mr. Colgren, we could not give you that information. It just is not available. It has already been covered before in the cross-examination. This is redirect, if I understand it.

Q. I am not quite clear, Mr. Heywood, whether or not it would be possible for you to supply me the figures for the year 1956 for the operating expenses and the maintenance expenses of Harsimus Cove bridges.

A. On the Harsimus Cove bridges, while we called September, we did not use one year's figures on that maintenance, as I recall. We used three years' maintenance.

[fol. 1573] Q. No, I mean the entire operating expenses and the entire maintenance expenses of the bridges.

A. No, I don't think the total operating expenses—it would require some work to get that; considerable work to get it.

Q. Would it be possible to supply the maintenance expenses for the year 1956?

A. I can give you the maintenance we use to develop down to what we call the month of September.

In other words, we took three years and took one/36th of it.

Q. Could we have the three yearly figures that you used?

A. I guess we can develop those.

Q. Now, Mr. Heywood, you make reference in your redirect to cars floated to or from steamship piers, and indicate a total of 114 cars. We had previously discussed that in our former cross-examination, and it was rather confusing by reason of the fact that those cars were shown in your work sheets under Jersey City lighterage piers. Would it be more proper to change that heading in your work sheets to reflect actually what those movements are? For instance, instead of Jersey City lighterage piers—

A. It would not help me any because I know the fact is these cars happened to be floated, while it technically was lighterage freight.

Q. That is the same number of cars that we are referring to?

[fol. 1574] A. 114.

Q. Yes. Found in your work sheets under Jersey City lighterage piers.

A. That is right.

Q. And in your explanation you refer to them as cars floated to or from steamship piers?

A. That is right.

Q. Mr. Heywood, on your redirect examination you indicated the method followed in developing your costs for lighterage freight.

In your work sheet, which is headed "Floatage Costs", that is apparently the traffic or the expenses shown in your last two columns headed Jersey City Lighterage and Greenville Lighterage?

A. That is right.

Q. Now, Mr. Heywood, I note that the expenses for the first three columns relating to Desbrosses Street Station, West 12th Street Station and Jersey City are car float— are apportioned on the basis of cars. Is that right?

A. That is right.

Q. When we come to these last two columns of Jersey City and Greenville lighterage, we find that the costs developed for those facilities are apportioned on the basis of time units. Is that correct?

A. Which particular sheet are you looking at now?

Q. It is the first sheet of your floatage costs.

[fol. 1575] A. Are you speaking about the sheet you said had Jersey City and Greenville lighterage?

Q. Yes, sir.

A. The first sheet?

Q. Yes, sir.

A. That simply shows me the expenses here.

Q. Yes. Now—

A. Which item are you referring to?

Q. In connection with Jersey City and Greenville lighterage—

A. Yes—

Q. You show expenses in connection with those facilities, and in your explanation today you indicated that those expenses had been arrived at by allocated total expenses on the basis of time units, lighterage minutes—

A. Where is that, in my testimony—time units?

Q. It is on page five.

A. Where?

Q. In your second full paragraph there, Mr. Heywood.

A. In respect to car float tonnage?

Q. Lighterage. The second full paragraph.

A. The last paragraph?

Exam. Boat: Yes.

The Witness: I have not found where it says time units yet.

By Mr. Colgren:

Q. Your testimony reads like this, Mr. Heywood.

[fol. 1576] That with respect to import/export lighterage traffic, the analysis of tug time produced minutes applicable to import/export lighterage of freight between Jersey City piers and Greenville piers and steamships and/or steamship piers. Then it goes on to say, "Lighter time consumed

in the movement of import/export traffic between these points was determined from an analysis of lighter location."

These minutes were then stated as a percent of the total tug and total lighter minutes separately during the study week.

Now, those percentages that were developed apparently are the basis for your allocation of the expenses shown in the columns under Jersey City lighterage and Greenville lighterage. Is that correct?

A. That is correct.

Q. And those represent not the total expenses for those facilities but just those expenses allocated to export/import freight. Is that right?

A. That is correct. Based on the percents.

Q. Is it possible that we could be supplied these percents that you used?

A. Yes. I guess we have got the total percents that we used. We must have, or we could not have made the statement.

Q. Mr. Heywood, in connection with your floating costs, have you made any credit for boat demurrage at steamship piers?

[fol. 1577] A. No.

Q. Now, Mr. Heywood, back on page seven of your redirect testimony, in the last statement there you indicate that during the year ending September 30, 1956, 1,474,086 cars were dispatched.

Would you tell me, please, what is the meaning of the term dispatched?

A. To us, it means the car is dispatched through the yard.

Q. That is all cars leaving—

A. All cars that entered—got into the yard.

Q. That would include all types of cars, such as those loaded at industries, those received from connections, inbound and outbound cars on the Pennsylvania passing through the yards—in fact, as you have stated, it is apparently all cars that get into the yard, either loaded or empty. Is that right?

A. That is right.

Q. It is true, is it not, Mr. Heywood, that the amount of time involved in switching of an industry car, for instance, from an industry to a road train—ultimately to a road train, including its classification and so on—would be far less than for instance an inter-train transfer of a through movement?

A. Which would be less?

Q. Switching from an industry, a loaded car.

A. No, I would not say so.

Q. Well, I mis-spoke myself. I said lesser. I think I [fol. 1578] meant greater.

A. Greater?

Q. Yes.

A. I will assume it could be greater.

Q. Well, yes—there are a lot of movements, are there not, Mr. Heywood, that are accomplished in less time than are other movements?

Well, they are in fact dissimilar services. In other words, each service does not get the same amount of time.

A. No, there would not be any sense in making a switching study if they all got the same.

Q. That is right. Would it not be proper, then, to measure the relative amount of switching services performed?

Excuse me, I want to restate that.

Wouldn't a proper way to measure the relative amount of switching services performed for various types of traffic be to provide a breakdown of such services so that you could compare like with like?

A. What do you mean by that?

Q. I am speaking now of—I just don't—

A. When you say like with like, I don't understand the question.

Q. I am referring to your ultimate assignment of these various services to export/import traffic, as against domestic traffic, but making the point, I hope, that in order to compare these various services accorded those classifications [fol. 1579] of traffic—export/import versus domestic, would be to compare the types of service which are accorded those types of traffic.

A. Well, I don't think I need to compare them. I want to find out what it costs to switch import/export cars through

the yard and when I take care of all the minutes and all the time of the crews in the switching operation, I think I have covered the situation very ably and I get back to the figures on switching import/export, which I think I am interested in.

Q. You have compared an average pier week of 28,347 with the number of cars you say shown in your study as 29,281.

Incidentally, let me break in now and can you show me where that 29,281 appears in your study?

A. I think that is covered by—the total I speak of here is covered by the detailed study of the yard, and covered by Mr. Clark.

Mr. Bongartz: I believe that figure, Mr. Colgren, was covered in Mr. Clark's cross-examination by you.

Q. Perhaps I should ask Mr. Clark the questions in connection with this, but could you tell me, Mr. Heywood, was there any comparison between the 28,347 cars and the 29,281 of the study, as to the relative portion of the respective switching elements which designate services accorded these various cars?

A. I don't know how anybody could do that, because the study is made for a week and you take the actual number of cars handled from that week and when you say the [fol. 1580] average for the year was 28, on an average, I don't know how you would tie those cars into it. That is just an average.

I am only trying to convey here the facts the cars used in the study were at least greater than the cars on the average for the year, so that if it were below, then you would criticize us for that.

It is over, so now what is your question?

Q. Well, is it possible, then, Mr. Heywood, to analyze the figure 1474,086 cars dispatched as between overhead cars, cars delivered to industries or cars delivered to float bridges and so on?

A. It might be, with a considerable amount of work, but I still think it would only be when the final answer came up, be considered an estimated distribution, that I figure.

Any study of what happens in a yard to me has got to be made currently, as you are going forward.

Q. Now, Mr. Heywood, you indicated that the total tonnage for your study week of traffic receiving lighterage service at New York was 20,276—that is tons.

A. Yes. No, wait a minute. I don't know whether I misunderstood your question or not. Did you say for the week?

Q. I don't know whether I asked you the question. I just wanted to refresh your memory that you had testified this morning that the total tonnage receiving lighterage service at New York was 20,276 tons.

[fol. 1581] A. That was for the study week.

Q. That is right. Does that tonnage include domestic freight?

A. Yes, it includes everything. That is the total, we say.

Q. Mr. Heywood, can I inquire from you concerning this data that was supplied to me by Mr. Clark at my request?

It is a sample sheet indicating the elements of service accorded cars of freight of export/import freight from differential territory at the port of New York at Jersey City.

Are you the person I may inquire of concerning this sheet, or should I direct my questions to Mr. Clark?

A. Possibly you could. It would depend upon how far you want to go on it.

Q. Actually I want to ask for an explanation. I really do not have a question, other than to say I do not understand a typical movement here on this sheet, and I think a good one to indicate or to trace through for me, if you would, would be the Erie car No. 14578.

Mr. Bongartz: I think the very nature of the question, Mr. Colgren, indicates that you should ask it of Mr. Clark, if you are interested in it.

Mr. Colgren: Well, I thought so too, and if he would be good enough to do that for me, I would be very appreciative.

Mr. Bongartz: Do you mean you want Mr. Clark to tell you right this minute from where he sits?

Mr. Colgren: Actually, I want only that one explanation.

[fol. 1582] Mr. Bongartz: Did you get the question, Mr. Clark?

Mr. Clark: Erie, 14578, shown as arriving in the port area ten p.m. on September 25, 1956, in Train P.G. ten and was unloaded on October 4th.

That car was set off at Waverly Yard. Therefore it is classified at Waverly and was moved to Meadows, in accordance with my explanation how we handle export cars going through Harsimus Cove.

They are held at Meadows, unless we have an order to move them straight to ship.

It was then classified at Meadows and moved to Harsimus Cove, when it was ordered in and transferred to Cove.

Mr. Colgren: Could you indicate to me, please, the corresponding minutes?

Mr. Clark: They should be in the same order as the notations. For instance, Waverly would be 15.2 per loaded car and 10.2 for total car. The same order method and the accord. Transfer Waverly to Meadows, Meadows 2.1 and 1.8, and from Meadows to Harsimus Cove 2.8 and 1.8.

Then, arriving at the Cove, the car was classified again and placed at Pier "H". After the car was unloaded, it was removed from Pier "H" empty, and moved from Harsimus Cove to Meadows. That meant the classification at Harsimus Cove, which is shown in columns 19 and 20 and also classification from Meadows to the road train, where we dropped the car.

[fol. 1583] Mr. Colgren: Now, these are actual minutes for these particular cars, or rather than this particular car—

The Witness: Those are the minutes for the study of all cars, regardless of whether they were import/export, domestic or whatever they might be.

In other words, in making your study I used all—I got the average minutes per car, using all cars.

Exam. Boat: You referred to two sheets there. Is the first loaded cars—time for loaded cars?

Mr. Clark: That is right. Two averages are shown on the sheet.

Exam. Boat: And the second is empty?

Mr. Clark: Empty and loaded.

Exam. Boat: I see.

Mr. Colgren: Which average is used in your study?

Mr. Clark: Mr. Heywood used the total.

Mr. Colgren: Was that true in all cases?

The Witness: Yes, sir.

Mr. Colgren: Thank you very much, Mr. Clark.

Mr. Clark: Thank you, sir.

Mr. Colgren: Mr. Examiner, that completes my cross-examination but Mr. Myskowski has a question or two of Mr. Heywood.

Exam. Boat: Very well.

By Mr. Myskowski:

Q. At page seven of your redirect examination, you discussed the marine maintenance costs at New York.

[fol. 1584] You there gave a figure of $2,282,238 as being the total marine maintenance costs for the year ending September 30, 1956. You say those are the costs at New York. Is that at New York or is that the cost for your maintenance for the whole Pennsylvania system?

A. That is at New York, Hoboken shop.

Q. Could you give me the figure for the whole system?

A. No, sir.

Q. At the last hearing, Mr. Heywood, we read into the record at page 1491 a figure of $2,981,625, which we got from your annual report in 1956.

A. Yes.

Q. As being the total marine maintenance costs for the whole system.

Now, are we to assume from that that all of your equipment at Baltimore and Philadelphia and Norfolk and any other place you may have it—you may have it up in the lakes, if you have any there—amounted to only the difference between those two figures.

Mr. Bongartz: Just a minute. You are talking in the first place about the 1956 annual report, weren't you?

Mr. Myskowski: Yes.

Mr. Bongartz: And you are asking Mr. Heywood to compare that figure with another figure which was based on a different period.

[fol. 1585] Mr. Myskowski: I gather the last three months were different.

A. I gather that is possible.

By Mr. Myskowski:

Q. All right. Would that vary very much?

A. I don't know.

Q. Do you have with you the total investment in barges?

A. Just barges alone? No. I don't think—No, I know I haven't got that investment.

Q. At the last hearing, Mr. Heywood, we took the figure which you gave us; for depreciation of barges and took your annual depreciation rate of 2.74 percent and came up with a total investment in barges of approximately $1,373,000.

A. Wait a minute. "We"—who do you mean, "we"?

Q. I thought we were checking it as we went along. It is in the record.

A. Well, you did, not "we".

Q. All right, sir.

At page 1492 of the record, Mr. Heywood, it is indicated that "if your figure of $88,000 which you show as the maintenance cost for barges is multiplied by twelve, it comes out to something like $1,055,000 per year for barge repairs."

At that time we pointed out that would amount to about 80 percent of your total investment in barges. Mr. Heywood, do you know of any equipment on a railroad where the repairs run 80 percent of the investment?

[fol. 1586] Mr. Bongartz: Just a minute—I object to this line of examination, Mr. Examiner.

Mr. Myskowski, as far as I can make out, is just continuing or attempting to continue the cross-examination that he was conducting at the last hearing. We had this hearing for the subject of redirect.

Under the Commission's practice, counsel is permitted the privilege of recross examination certainly. However, that privilege should not extend back to his original cross-examination and try to elaborate on that. I fail to see any connection.

Mr. Myskowski: I am trying to get the breakdown, Mr. Examiner, of this 2,282,000.

Mr. Bongartz: Why don't you ask him the question you have in mind when you were asking him various things.

Mr. Myskowski: In the interest of saving time, I was referring to the previous computations made.

Mr. Bongartz: They were computations made by counsel, Mr. Examiner. I don't know whether that saves any time at all when you refer to them.

Exam. Boat: Objection overruled.

By Mr. Myskowski:

Q. Mr. Heywood, is it possible that such a high figure for repairs could be accounted for by perhaps taking the chassis of a barge and rebuilding a whole new barge on it, and charging it off to repairs?

[fol. 1587] Mr. Bongartz: You are familiar with what counsel is referring to as the chassis of a barge?

The Witness: No, I don't know what the chassis of a barge is.

By Mr. Myskowski:

Q. Or the framework?

A. I don't even know what it is of an automobile.

Q. Well, the sailors say it is the hull.

(No response.)

Can you give me any logical explanation, Mr. Heywood, why the repairs would run 80 percent of the investment?

A. No, I can't. The only thing I would say is we were putting them in condition to use, that whether it was 80 or 90 percent of what it's—

Mr. Bongartz: You are not relating them to any percentage, are you?

The Witness: No, sir.

By Mr. Myskowski:

Q. Do you have the total domestic tonnage which was used in apportioning this barge repair cost?

A. No, I don't have the total tonnage.

Q. Could you tell me how you took this $2,282,000 and got it down to something like $88,000 for barge repairs?

A. I got that down based on time applicable to the particular export/import service.

Q. How did you find out what was applicable?

A. Going through the tug logs and the logs of the lighters [fol. 1588] and barges and floats, et cetera—the time spent on each class of service rendered.

Q. Are not these barges used for both domestic and import/export?

A. Yes, sure.

Q. Then you somewhere must have the figures on what the tonnage was on import/export compared to domestic?

A. I didn't need the tonnage. I said I did it on the log time of the equipment spent by the equipment in the service.

Q. Mr. Heywood, do you know if you are still operating car floats between Cape Charles and Little Ferry, Virginia?

A. It is Little Creek.

Q. Little Creek?

A. Yes.

Q. Are you still operating car floats between those two points?

A. As far as I know, we are. I don't know how else we would get them across there.

Q. Have you any idea how much equipment is involved?

A. No, I do not.

Q. Do you know how far it is between those points?

A. No, I would only be guessing. It is quite a number of miles. I don't know.

Q. At the last hearing, Mr. Heywood, I questioned in in regard to the figure of 43 cents which you showed as being [fol. 1589] the cost of lightering traffic at Baltimore. You admitted that figure was incorrect. Since that time, have you looked at the contract between your company and the Atlantic Transport Company to find out what is the correct figure?

A. No, sir.

Q. Mr. Heywood, you were here this morning, when Mr. Talbott stated that the B.&O. and the C.N.J. handled a substantial volume of scrap iron and ores in direct transfer?

A. No, sir, I was not here.

Q. All right, sir, the record will show that.

Let us assume that Mr. Talbott did that. Does your total for New York include those tons?

A. Mr. Talbott will have to answer that, as I stated in my original testimony.

Q. Mr.—

A. Well—

Q. Go ahead.

A. I accepted the figures given to me by the various carriers. Jointly, the railroads put them together to summarize.

Mr. Myskowski: Mr. Examiner, the last time I questioned Mr. Talbott about Mr. Heywood's figures, Mr. Langdon strenuously objected.

Now, questioning Mr. Heywood and from whom do I get it? He says he doesn't know. Whom do I get it from?

Mr. Bongartz: On this particular testimony this morning, [fol. 1590] Mr. Talbott said he had not included this item Mr. Myskowski is talking about.

Mr. Myskowski: Will you accept Mr. Bongartz' statement?

Mr. Bongartz: I don't know that there is any reason why the witness has to accept my statement on it. I am just stating the record is already clear in that respect and I don't see why this witness could be examined on what Mr. Talbott said.

Mr. Myskowski: The record is far from clear.

By Mr. Myskowski:

Q. Could you turn to your page, sir, which says terminal studies, New York, N.Y., ton basis?

A. How far down is this in the pile you have there?

Q. The first sheet—one of these.

A. Terminal Studies, New York?

Q. Yes, sir. There you show box cars, general cargo, and for the B.&O., C.N.J., you show 31,404 tons. Is that correct, sir?

A. That is right.

Q. And a little further down, you show open cars, B.&O., C.N.J., 10,931 tons. Is that correct?

A. That is correct.

Q. Now, are there any other tons of the B.&O. and the

C.N.J., other than those 666 tons of reefer traffic in your New York total?

A. This is what is in my New York total. Right what it says there.

[fol. 1591] Q. Then there are no other tons? I don't see any on that page, do you?

A. No.

Q. So that if there were any tons which were transferred direct from car to ship, they are not included in this total. Is that right, sir?

A. I don't know. If it is B.&O. you are talking about, I don't know.

Mr. Langdon: We told you this morning, Mr. Myskowski, it did not include the tonnage that was transferred direct from ship to car.

That is already established and we told you why.

Mr. Myskowski: Fine, Mr. Langdon. You are being very helpful. I wanted to establish that fact.

Mr. Langdon: You don't have to establish the fact. I have already conceded the fact. It was a concession.

Mr. Myskowski: Thank you.

By Mr. Myskowski:

Q. Mr. Heywood, in your Baltimore study did you include the cars which carried tonnage which was directly transferred from rail to ship?

A. What railroad?

Q. B.&O., P.R.R.—any of them?

A. I don't know anything about the others, or any of them, as you call it.

Q. All right, sir. How about the Pennsylvania?

[fol. 1592] A. No—wait a minute. Car float, you say, direct to ship?

Q. That is right.

A. If we had any down there, we used them.

Q. No, tonnage which moved direct?

A. That is what I said, car float direct to ship.

Q. Wheel to keel, as they call it, I understand.

Mr. Bongartz: I think the counsel and witness are talking about two different things.

By Mr. Myskowski:

Q. Did the Pennsylvania at Baltimore handle any tonnage directly from rail to ship?

A. I would have to check back and find out whether we did or not. I think we did. I would say yes. I will say yes, from the point of time. Yes, we handled it.

Q. Do your studies indicate it is cheaper to handle traffic in that manner, where you have no lighterage and presumably no station costs?

A. I never made a comparison of it.

Q. Such traffic at least would not carry the lighterage expenses and the station expenses which lightered traffic does carry. Is that correct, sir.

A. Read that question, please.

(Question read.)

A. It would not carry the same expenses, but it would carry the car float expense of it.

Q. This is not car float, Mr. Heywood, you understand. [fol. 1593] It is traffic which moves direct from rail to the ship.

A. Well, we would have a station.

Q. Would you have lighterage?

A. No, not if it goes right from the apron of the pier or even the interior of the pier to the ship. Unloaded from the car and taken to the ship, no.

Q. Based upon your experience, can you tell me which is cheaper?

A. No, I cannot.

Q. If the station costs were the same but there was no lighterage in connection with the wheel to keel traffic, presumably that would be cheaper to handle. Is that not right, sir?

Mr. Bongartz: Mr. Examiner—

The Witness: I said I didn't know.

By Mr. Myskowski:

Q. Mr. Heywood, the costs of handling such traffic was included in your Baltimore study, though, where such traffic was handled?

A. Yes. Wherever we handled it over the pier direct to the ship, yes.

Q. I want to ask one more question on this sheet which you have in front of you—the terminal studies. You show for the B.&O. and the C.N.J. 31,404 box cars of general cargo—that is, tons moving in box cars of general cargo, and 10,931 tons in open cars. Is it your understanding that this is the traffic which moved or the tons handled? As I [fol. 1594] understand it, in some traffic it is double handling. Is this the traffic as such which moved, or is this the total amount of tons handled?

A. This is the traffic that is moved.

Mr. Myskowski: I have no other questions, Mr. Examiner.

Exam. Boat: That seems to be all, Mr. Heywood.

The Witness: Yes, sir.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Bongartz: Mr. Examiner, I would like to offer in evidence all of the exhibits presented through Mr. Heywood. I am saying that to be doubly sure. I was under the impression at least one had already been received. But Exhibits No. 50 and No. 50-A and 50-B are offered.

Exam. Boat: I think you are correct as to 50-A. The reporter has shown them as received, but I think we should indicate that all of those exhibits—that is, No. 50, 50-A and 50-B are now received.

(Protestant's Exhibits No. 50, 50-A and 50-B, Witness Heywood, were received in evidence.)

Mr. Bongartz: There is some question in my mind whether Mr. Clark's exhibits were received. Mr. Clark was examined at the last hearing. We have no redirect of him, so that concludes his testimony.

Exam. Boat: We had assigned No. 54 to Mr. Clark's statement, I believe, and I don't have the—

[fol. 1595] Mr. Bongartz: Off the record?

Exam. Boat: Yes.

(Discussion off the record.)

Exam. Boat: On the record.

Let the record show if Mr. Clark's Exhibit No. 54 was not previously received, it is now received in evidence.

Mr. Bongartz: Thank you very much, sir.

(Protestant's Exhibit No. 54, Witness Clark, was received in evidence.)

Mr. Colgren: In the interest of getting Mr. Heywood released this afternoon, I devoted only the time available to us to reviewing his redirect examination, and have had no chance or have taken no time to review Mr. Talbott's redirect testimony.

I would like very much the opportunity of this evening to do so. I understand he will be available tomorrow.

If I may ask for an early adjournment this evening to pick up tomorrow, I think we can complete our recross in a comparatively short time in the morning.

Mr. Langdon: That is satisfactory to us, Mr. Examiner. I should like the record to show I am giving Mr. Colgren now the copy of the working papers which underlie the last adjustment I think referred to in Mr. Talbott's testimony this morning, and I also have a copy of those same working sheets for you, sir, and the cost section.

[fol. 1596] Exam. Boat: Thank you.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

We will recess, then, until ten o'clock a.m. tomorrow.

(Whereupon, at 3:50 o'clock p.m., the hearing in the above-entitled matter was adjourned until ten o'clock a.m. on Friday, April 11, 1958.)

[fol. 1597]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

F.S.A. Docket No. 32204

[Title omitted]

Met, pursuant to adjournment, at 10:00 o'clock a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1599]

PROCEEDINGS

Exam. Boat: Come to order, please, gentlemen. Are you ready to proceed?

Mr. Langdon: Do you want Mr. Talbott, sir?

Exam. Boat: Yes.

E. M. TALBOTT being previously duly sworn, resumed and further testified as follows:

Recross examination.

By Mr. Colgren:

Q. Mr. Talbott, are Jersey City and St. George stations, Staten Island, the only stations at which switching by the B.&O. and C.N.J. are involved in the New York area?

A. Jersey City is the only station on the Central Railroad which is involved in the water-borne traffic.

On Staten Island we do our classifying in Arlington Yard, which is located about six miles from St. George.

Q. Your switching study was designed to develop only the average yard engine minutes per car for yard classification, lighterage, pier switching and float bridge switching. Is that right?

A. Well, the studies were really designed to produce data

from which the minutes could be compiled for any type of switching.

In other words, the form filled out to cover the tour of duty for each yard engine showed every item of work which was done during the day and the minutes required in each [fol. 1600] type of switching, but in our compilations we only compiled the time record for classification, lighterage and float-bridge operation.

Q. You actually covered in your study, then, all of the elements of switching, the type?

A. We covered all the elements of switching and it checked out with the tour of duty for every yard engine working during the day.

Q. The statement in your redirect testimony is not quite clear. On page three, you say these forms were prepared by yard masters. Did they actually complete the forms?

A. Yes.

Q. And fill them out?

A. We had them fill them out. The yard masters located in the yard, from which offices switching orders were issued, yes, sir.

My experience in making these yard switching studies is that conductors do not fill them out properly and it is too expensive to assign yard men to ride the engines to fill them out properly, but our orders for yard switching are all issued from some location in the yard, and we had the yard master with assistance fill out these forms for each assignment they gave a yard crew. They reported in when they finished the previous assignment and got the next assignment.

Q. You actually did not have engine riders, then, follow- [fol. 1601] ing the engine movements?

A. No, we did not. We think our method was more accurate as a method for doing it in our yards.

Q. On page 4 of your redirect testimony, Mr. Talbott, in that box at the upper portion of the page there, opposite lighterage pier, you show 313 loaded cars of export/import freight moved via the lighterage piers.

Did those 313 cars include the cement which you later discussed?

A. They did not. Neither did the time.

Q. Why were they not included in that switching study?

A. There is a separate supporting yard for the cement pier and the time required to move the cars from the classification yard to the cement pier was shown in the study, but it was not recapitulated, and we did not use it.

Q. If I recall your previous testimony, I think you determined finally that was domestic traffic?

A. It was domestic traffic, yes.

Q. I would like a little fuller explanation, if I may, and I tender you a map here put out by the Corps of Engineers.

A. Yes, sir.

Mr. Colgren: Mr. Examiner, you might be interested in following this.

Exam. Boat: Thank you.

By Mr. Colgren:

Q. Would you indicate for me just where this cement [fol. 1602] is handled? Perhaps we can do it by reference to—

A. Do you have my map? You had a copy of it. I am more acquainted with that map than this one.

Q. No, I don't have it with me, unfortunately.

A. May I have an operating man number these piers, who is well acquainted—number on here.

Mr. Langdon: Off the record, Mr. Examiner?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Langdon: What does this map purport to represent, Mr. Colgren, the Jersey Central railheads at Jersey City?

Mr. Colgren: Yes, the Central Railroad of New Jersey, water facilities—pier facilities.

And it is a map made by the Corps of Engineers of the Department of the Army. And this is merely a reproduction of that map. As indicated, it serves quite a few purposes, indicating the handling facilities for all those items shown in the lower left-hand column, shown by the legend there.

The Witness: I gave you a map on which I had marked

all these different yards, Mr. Colgren, in crayon, and I would prefer marking this against that map, or against my map, which I did not bring with me.

Mr. Langdon: Is that the map you gave them when Mr. Colgren and Mr. French were in Baltimore?

[fol. 1603] The Witness: Yes, we referred to in the last hearing. We passed it to the Examiner to look at.

Mr. Langdon: Would it be possible to address your questions to that map, Mr. Colgren?

Mr. Colgren: No, I do not have that map with me, unfortunately, Mr. Langdon. And that map only, as I recall, marked out the lighterage yard—the one that you gave to me only marked out the extent of the 77 acres of the lighterage yard. I believe the map you had yourself, Mr. Talbott, went into more detail than you gave me.

The Witness: There are certain tracks set aside just behind the cement pier for the cement pier operation.

By Mr. Colgren:

Q. Excuse me. Which is the cement pier?

A. Pier 10.

Exam. Boat: Are you going to introduce this in evidence?

The Witness: There is a small number 10 at the end of the pier.

By Mr. Colgren:

Q. Could you perhaps locate that by reference to one of these large circled numbers so we can locate it?

A. Three hundred—number 300.

Exam. Boat: I see.

Mr. Langdon: May I ask for purposes of clarification, did the Army put this legend on here?

The Witness: Yes, sir. This is an exact reproduction of the photostat.

[fol. 1604] Mr. Welsh: Off the record, it may help you to know—this is off the record, if the Examiner please.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Langdon: Mr. Colgren, this map, we have been informed, that you have tendered to the witness, is not an up-to-date map, in that it shows facilities which since the drawing of this map have been abandoned.

I am wondering if we cannot use for the purposes of your questioning the map which already is in the record and which shows the separate pier numbers for the Jersey Central, a map put in by a witness for your side, namely Witness Gilman, I believe. Would that be possible?

Mr. Colgren: Yes, I think so. I thought this other would be more helpful.

The map you referred to is, I think, Exhibit "D" of the Witness Gilman?

Mr. Langdon: It is a safe-time, save-money map, you know.

By Mr. Colgren:

Q. Mr. Talbott, referring to the map previously introduced in the record—

Exam. Boat: That is part of Exhibit No. 15.

Mr. Colgren: Yes, sir. Thank you. Can we now identify the pier referred to for the cement shipments in your testimony?

The Witness: Pier 10.

[fol. 1605] By Mr. Colgren:

Q. It is the Pier 10 of the Central of New Jersey, and B.&O. lighterage piers. Is that right?

A. That is correct.

Q. That is, particular facilities devoted to bulk cement, is that right?

A. That is correct.

Q. Do you handle certain other shipments of cement in containers?

A. If it is imported in containers, it is handled through the lighterage piers.

Q. I am not confining it to import or to export traffic. Do you handle domestic or foreign cement in, I believe they are called, air-activated containers?

A. I do not recall any cement handled from this month of the study. If we did, it was handled through the lighterage piers. But I made a list of all the traffic handled for September, 1956.

Q. These air-activated containers are quite large and bulky and require a crane to handle them to and from the open cars in which they are shipped?

A. Well, any other cement handled; if it is handled, would be handled through the regular lighterage pier and probably over the open pier, but it would not be handled over the cement pier.

Q. Is that open pier you refer to one of these back in the [fol. 1606] slip, immediately north of your lighterage yard?

A. No, the open piers are eleven and fourteen—pardon me a minute, I have an operating man here. He might tell me that number off the record. What is that number, Tom?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: Back on the record.

The Witness: Mr. Colgren, I am sorry I had to ask that question. Eleven and 13 are open, and 14 is closed.

By Mr. Colgren:

Q. Do you have crane facilities—strike that last question. Did I understand that one of those lighterage piers is not in operation?

A. No. 12, at the present time.

Q. Why is that, Mr. Talbott?

A. I don't really know why at this time it is not in operation, unless we don't need it.

Q. Was this pier being used in September of 1956?

A. I would have to look back in my work papers to check that, and that is on that map I furnished.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: Back on the record.

Mr. Langdon? Do you want to supply that answer later?

The Witness: Yes, I would— We include in the cost [fol. 1607] study all the piers being used in September, 1956—the taxes, and valuations and everything else with respect to them.

Now, I just don't have all those papers with me at this point. I don't have that breakdown of taxes or the investment figures with me, by individual piers.

We would be glad to supply that answer, exactly what we put in that, if that is satisfactory.

By Mr. Colgren:

Q. Yes, I think that would be all right, Mr. Talbott, but if it develops that pier was being operated in September and is not now being operated, it would reflect a measure of economy in your present operations not reflected in your cost study. Is that right?

A. That would be so. Of course, it could be related to the present traffic. We may have to hold it to take care of other peak periods. I would have to go into that and give you the whole story on it.

Q. My understanding is there is a supporting yard loading to Pier 10 which has been described to us as included within your lighterage yard.

Now, what is that back-up yard for Pier 10—was that included in your valuation for the purposes of your cost study?

A. It was not.

Q. I wonder if there is any way we could establish the limits of that portion of the lighterage yard which you [fol. 1608] attach to Pier 10 cement facilities?

A. It would go all the way back to where the yard starts to fan out from the running tracks. As I recall, on that map we had it all marked on there in crayon, and the valuation department, the tax department set up their valuation and taxes for each supporting yard.

Mr. Welsh: That map is not an exhibit, is it, Mr. Langdon?

Mr. Langdon: No, it is in the working papers. A copy was given to the New York Central people when they came to Baltimore. Unfortunately, we did not have one here.

Mr. Colgren: Yes. I want to state for the record that the copy of the map that was given to Mr. French and myself only delineated this 77 acres that were used as a tax and valuation base and comprised the so-called lighterage yard of the Central of New Jersey.

It did not have the details that a similar map retained by Mr. Talbott had.

Mr. Langdon: We can get that map.

The Witness: We can furnish it as an exhibit and get it.

Mr. Langdon: Would you like to have it in exhibit form, filed as a late-filed exhibit?

Mr. Colgren: Yes. That would be very helpful.

Mr. Langdon: All right, make a note of that, Mr. Talbott.

The Witness: All right.

Mr. Colgren: Just to facilitate this part of the examina-
[fol. 1609] tion, I wonder if a notation could be made on the map when it is supplied as to the locations where the cement is handled, the bulk cement that we have described or been talking about, and also the location where any other bulk cement in these air-activated containers would be handled, as well as any other cement shipments which may come in any form, other than the two mentioned.

Is that agreeable, Mr. Langdon?

Mr. Langdon: Yes.

(The document described to be furnished as a late-filed exhibit, by protestant.)

By Mr. Colgren:

Q. Mr. Talbott, if you will turn to page five of your redirect testimony, just for clarification, you list there certain railroads that you have interchange service with—and you do not include the Long Island. Should that be included?

A. No. Any interchange with the Long Island passes through the Jersey Central.

As I understand it, we do not have a direct interchange with the Long Island. If we do, any interchange we have would pass through here. There is also the West Shore of the New York Central, and I did not list it. Any interchange we make would pass through this float bridge.

Q. All right, sir.

Mr. Talbott, now on page six of your redirect testimony, [fol. 1610] if you please, can you tell me why it was necessary to resort to system figures for yard engine hours in order to establish the representativeness of the September figures?

A. I used the system hours because certain expenses, unit costs, were developed from the system costs. In other words, yard track maintenance, particularly, for a three-year average on that.

Q. As I understand your table on the bottom of page six, it is presented for the purpose of establishing that the yard engine hours developed in your September, 1956 study of 27,903 for Central of New Jersey and 1898 hours for the B.&O., St. George portion of the switching study, were representative of average operation.

Now, was it not possible to use the yard engine hours for the same locations for these periods indicated?

A. Well, this tabulation goes to representatives of the yard maintenance costs and the locomotive repairs, which were on an annual or a three-year basis.

We did not have the data by months for the St. George operation.

Now, over on the next page, I have shown the cars classified, the engine hours in the Jersey City yard, for the last two years, in September. So I think that goes to the representativeness of the operation in Jersey City.

Q. Yes—and on page seven in that next table, that refers [fol. 1611] only to cars classified. That is the only element of switching service.

A. Well, it is cars dispatched or cars classified. It is a one-car count for every car going through the yard. Yes, that is correct. It is only connected with the total yard operation—the total yard operation in Jersey City.

Q. The heading indicates it is restricted to classification.

A. Well, it is car dispatched or—every car in the yard has to be handled, has to be classified.

Q. Yes. But that is the only element of switching covered by that table at the top of page seven, is that right?

A. Yes. That is right. Total car dispatchment for the yard.

Mr. Langdon: Do you want to change that heading to make it total cars dispatched?

A. It could be changed to total cars dispatched or total cars classified. It is a one-car count for every car passing through the yard.

By Mr. Colgren:

Q. Yes. But the engine hours in the last column there refers only to one element of classification.

A. No, that is the total engine hours in the yard. That should be the total of all switching operation.

Mr. Langdon: I suggest a clear title be put in there so there won't be any question about it.

The Witness: We just indicated on the record those engine hours should be total engine hours operated in the [fol. 1612] Jersey City yard.

By Mr. Colgren:

Q. Referring back to the previous table on page six, is it your point, Mr. Talbott, because your entire system average for the Central of New Jersey and the Staten Island Rapid Transit System figures for yard engine hours for the periods indicated, that they would establish an average for an individual yard?

A. Well, as I said before, the purpose of these was to establish the repetitiveness of such items as are based on a three-year average or one-year average.

Yard maintenance track cost was a three-year average in these studies and the locomotive maintenance was on a one-year average.

So insofar as those elements of cost are concerned, I think these figures indicate representativeness.

Now, when it gets to the operation of the yard, I admit we did not have data for the St. George yard itself over a period of time, but we did have some data for the Jersey City yard—the total operation of the Jersey City yard, which I have shown at the top of page seven.

By Mr. Colgren:

Q. From your explanation, I gather there is no particular significance of the table on page six to what occurred —actually occurred at the Jersey City Yard, during September, 1956?

A. I thing it has significance to those elements of costs [fol. 1613] which are based on a one-year average or three-year average and part of the costs are based on a one-year average and a three-year average.

Q. Yes, I had only reference to the engine hours as compared to your switching study, those developed in your switching study.

A. Perhaps the engine hours might not have a positive representativeness, but I think they have a relational representativeness.

Q. All right, sir.

On page nine, if you please, Mr. Talbott, you refer towards the top of your page there to developing the pier maintenance costs for Jersey City and Staten Island—and I notice you used a period for the Central of New Jersey, from 1953 to 1955, inclusive, and for the B.&O. Staten Island a period of 1952 and 1954, inclusive.

Will you tell us, please, why you used different periods?

A. I think I stated yesterday we used for the B.&O. 1952 and 1954, because up to that time we maintained the records showing the cost of maintaining individual structures on the B.&O. Railroad, and that record was discontinued in 1954, due to economy reasons, and I thought it was better to use the actual figures as long as we had them, rather than base them on some kind of an estimate or approximation as was necessary for the Central Railroad.

Their costs are on a very firm basis and we could probably [fol. 1614] have estimated 1955 on some kind of a basis, but I still think it was better to use for the B.&O. the figures based on actual cost.

Q. The Central of New Jersey did not maintain similar records, is that right?

A. That is correct.

Q. On the next page, page 10, Mr. Talbott, you refer to the actual number of tons trucked to and from Jersey

City and St. George, during September of 1956, as 7,064 tons.

On the next page, in your table, opposite the description "via trucks and docks", you show a figure of 8,873 in a column headed "Tons".

Is that the same tonnage that is referred to on the previous page?

A. That 7,000 tons is included in the 8,873, but they are additional tons.

Q. Yes. What are those additional tons?

A. In addition to the 7,064 tons, there were 399 tons trucked from the pier stations on Manhattan, and there was 1,410 tons of traffic which came off the docks and was floated during September.

Q. I did not get that last statement.

A. 1,410 tons which came off of the docks and were floated in September.

Q. Do you mean—

[fol. 1615] A. Which had been previously unloaded.

Q. You mean lightered, then?

A. Lightered.

Q. Mr. Talbott, I don't understand that. Those 399 tons that you just referred to that are trucked from your lighterage piers at Manhattan—

A. No, not the lighterage piers—the pier stations. That is the traffic which appears on my summary sheet No. 1, which moved to the pier station via float and was trucked from the pier station to the steamship pier.

Q. Yes—but is that not already included in the 7,064 tons?

A. No, it isn't. If you read it, I think, it says the actual number of tons trucked from Jersey City to St. George amounted to 7,064 tons.

Q. I see.

A. The 399 tons were trucked from the Manhattan pier station.

Q. Would you, if you please, Mr. Talbott, refer to your summary sheet and help us find the respective tonnages?

A. Of course the tonnage—they do not show on statement one. I will have to give you reference to another page.

They are included in these tonnages. In other words, these 399 tons are included in the carload of traffic which was floated to the pier stations—not lightered but floated, and are part of the forwarder traffic which was floated to the pier stations, and then from the pier stations it received a truck handling.

[fol. 1616] Q. Yes—

A. So it is on top of the 7,000 tons which was trucked to and from St. George and Jersey City.

Q. Now, if you can show us where they appear in your supporting work papers.

A. If you turn to working page four in the upper section of the page, sir, there is the New York car loads. That 239 tons was the carload traffic which went into the Manhattan pier stations. That whole 239 tons was trucked.

Now, in the next group of figures, 160 tons of the carload forwarders traffic was trucked, making 399 tons.

Q. Now, Mr. Talbott, can you show me where the 1410 tons that you had reference to will appear in your work papers?

A. Well, that would be included in the total tons. I think I have explained a couple of times that we arrived at the tonnage shown on page one by listing—making a complete record of all the carloads of traffic imported and exported during the month.

What I mean by imported is cars placed at the lighterage pier for unloading, beginning the first of the month to the end of the month and all cars which were completely loaded, import traffic, from the first to the end of the month, and we did that so as to eliminate duplicate handling over the lighterage pier. We simply thought by cutting it off clean from the first to the thirty-first, we would eliminate [fol. 1617] second-hand handling on the pier, and that was the tonnage we used for import and export traffic supporting the data on page one.

Naturally, there are lap-overs.

This table is the traffic actually lightered during the month which got rehandling, and this might be a little different from the tonnage shown on page one of our exhibit because it is possible the lighterage traffic was on the

last day of the month and we moved it the first day or vice versa.

So, in other words, we had 1410 tons of traffic which had been loaded on the dock and lightered maybe the previous month. Or vice versa. This 1410 tons had been handled on the dock and lightered during the previous month, and we subtracted it out of here, in order to arrive at the actual tons lightered during the month of September. And that is the purpose of the adjustment below.

The 14721 item is trying to ascertain the actual tons lightered in September.

Q. I think you said 14 thousand. You meant 41 thousand?

A. Yes. Pardon me, 41,000.

Q. On page 11 again, that table appears on the bottom of the page, opposite September appears the figure 67,945 tons. Does that include the cement tonnage?

A. Yes, it did. At the time this was made, we could not separate those figures. So we thought that the total figure would have some degree of representativeness, or would [fol. 1618] prove representativeness.

Q. Is that movement of cement during September a typical movement? I mean, is that—or let me put the question this way.

Do the other figures for the other months in that table include similar quantities of cement?

A. It is my recollection that they did, because since we prepared this statement we acquired some figures which indicate that the cement is fairly average—the September figure was a good average.

Q. Is it possible from that source of information for you to give us the number of tons of cement handled for the months shown in that table?

A. For 1956, the cement averaged 22,179 tons a month. The September figure was 23,705, which is pretty close.

Q. That first figure was what, please?

A. 22,179 tons.

Q. Mr. Talbott, if that is a fairly regular movement and constant throughout the year, as you have indicated, would you mind telling us why you left the costs of handling cement out of your study?

A. Well, it is a special commodity handled over a pier,

and the costs could be readily ascertained for that commodity, and I think it would have distorted the cost of the general commodities moving through the port of New York, [fol. 1619] to average that in with the others.

Mr. Langdon: I believe you testified that was domestic traffic, did you not?

The Witness: It is all domestic traffic.

By Mr. Colgren:

Q. Were you able to segregate any similar commodities from your Baltimore cost study?

A. Not to general commodities.

Of course, we eliminated from the Baltimore study all bulk commodities such as were moving over the Curtis Bay ore pier.

Q. You do not mean by that statement to imply that no bulk commodities were included in your cost study at Baltimore at all, do you?

A. Only those that might have been handled over the general cargo piers.

Q. Yes.

A. I don't think any were handled, no.

Q. Now, Mr. Talbott, on page 14, on the second table on that page, under the column "Cars lightered", and opposite the month September, 1956, you indicate 1596 cars receiving lighterage.

Does that total include the cement traffic?

A. Yes, it does.

Q. Mr. Talbott, on the summary sheet of your cost study, I total up your cars indicated as moving by your lighterage [fol. 1620] piers as 1564. That consists of the 1130 under the box cars, 407 under open top, and 27 reefers.

That leaves a disparity between those two figures there of 32 cars?

I understand that the cars shown on the summary sheet of your cost study did not include the cement cars.

A. That is correct.

Q. You have indicated there were some 23,000 tons of cement that moved during the month of September.

According to our calculations that 23,000 tons of cement

moved in 32 cars. Do you think that is a physical possibility?

A. No, I do not. I mean, of course, I do. That is not the case.

This study was made from a time study of the tug boat logs. And there again there could be some lap-over, of course. There is no question about that.

Let me look in the papers now. Let me check into that.

I will have to look at the results of my study on this and see what caused that difference, Mr. Colgren.

Q. Yes, we are having quite a bit—

A. We can explain it. We can reconcile that. It came from different sources; this came from one tabulation, and, as I said before, the cars on page one came through a compilation of the cars received and billed through the lighterage stations for the month. They did not come from, the [fol. 1621] same sources, but I think there should be closer agreement than that, and I would rather give you the answer if you are satisfied for me to do it that way.

Mr. Langdon: Can we include that in the—I think there are one or two other questions we have undertaken to supply, and we will include this as an additional one. Is that all right, Mr. Colgren? In other words, where are the 32 cars? That is really the answer, is it not, or the question, rather?

Mr. Colgren: Yes. I would appreciate it very much. As is evident, we are having quite a bit of trouble reconciling some of these figures and we would appreciate some assistance.

The Witness: We will gladly supply—we will tell you what that difference is. I am anxious to know myself what causes that difference. As I said before, the figures came from two different sources entirely, but they should be in agreement and there should be an answer for it if they are not.

By Mr. Colgren:

Q. Now, Mr. Talbott, again we are having trouble reconciling certain figures here. On page 15 of your statement

on redirect, you indicate a total of 56,404 tons transported in lighters to and from Jersey City, during the month.

A. Where was that—page 15?

Q. Page 15.

Exam. Boat: On the center of the page—below the center.

By Mr. Colgren:

Q. The last sentence in your first full paragraph.

[fol. 1622] A. That should be "and St. George." I thought I had inserted that.

Mr. Bongartz: Yes, you did.

Exam. Boat: You did insert that.

The Witness: I did insert that when I put the statement in yesterday.

By Mr. Colgren:

Q. Yes. I want you to refer to that number 56,404 tons and tell me if you please how that reconciles with the 41,721 tons of import/export freight moving via Jersey City and St. George, and the 23,963 tons of cement.

Mr. Langdon: Would you not care to look at page 11, Mr. Colgren, the table at the top? Isn't that the reconciliation?

Mr. Colgren: No, that is what I have reference to—the figures still do not work out.

The Witness: The figure of 63,000—

Mr. Colgren: That is right, but on page 15 you say that a total of 56,404 tons were transported in lighters. And on the table on page 11 you indicate that actually the figure is 41,721 plus the 23,963 tons of cement, were the only tons actually receiving lighter service.

The Witness: The 41 thousand did not receive lighter service. I have taken out of there the traffic which arrived via trucks.

I had to make all those adjustment listings in order to reconcile the 41,721 figures with the 56,404 figure.

[fol. 1623] By Mr. Colgren:

Q. Again, Mr. Talbott, if you will refer to the summary sheet of your cost study, there we come up with the 41,721 tons.

A. That is correct.

Q. That moved over your lighterage piers?

A. That is correct.

Q. That is the figure you use in your costs ascertainment, and yet you tell us here on page 15 that a total of 56,404 tons were transported and lightered.

A. You had the cement of 23,000—23 added to 41 would make 64,000. Then we took out of that the traffic which was trucked in lieu of lighter, and also the traffic which was lightered in the previous month and placed on the dock, and was not lightered in September. These were the actual tons lightered during the month of September and we had it make these lap-over adjustments in order to arrive at that.

You know, on the next to the last line we have, "Handled by Spencer Team Lighter". And that expense is not in the total cost which was divided by 56,404 to arrive at an average cost per ton. It is shown in the cost statement as a separate item. So I think the costs are all properly stated.

Mr. Colgren: Mr. Talbott, Mr. Myskowski has some questions. He will make that phase of it up in his questions.

By Mr. Colgren:

Q. Now, I would like to ask in connection with page 17 of your statement you are discussing there marine equip-
[fol. 1624] ment and lighterage equipment.

Tell me, Mr. Talbott, is there any boat demurrage included in your cost study?

A. We didn't include it, Mr. Colgren. We overlooked that point.

But I have since acquired a figure for September, 1956. The boat demurrage at New York was $594.

Q. $594?

A. Yes.

Q. Does your information also include the fact that boat demurrage amounts to $75.70 a day? That is the charge for boat demurrage?

A. I simply called our offices at New York last night and asked them to go through the bills and tell me how much boat demurrage was for September, 1956. I think they have given me the figure.

Q. Yes, I am not quarreling with the $594 amount. I just wondered whether your information included what the boat demurrage charge is.

A. It did not include that, Mr. Colgren.

Q. Mr. Talbott, I overlooked a question in connection with the table on page 16 of your statement. For the figure opposite September of traffic received in the column "Traffic Receiving A Marine Movement", as stated in cars, you show 10,157, whereas on page 14 in the table we are discuss-[fol. 1625] ing previously you show for the month of September a total of 10,328.

A. That is accounted for by the fact I explained before, that we got some of these figures from a second record and did not attempt to reconcile those figures.

I would like to try to reconcile that also when I give you the explanation on the cars on page 14, because they relate to each other.

Mr. Langdon: You are talking about the difference between 10,157 and 10,328?

Mr. Colgren: That is right.

The Witness: Yes.

Exam. Boat: Let us recess for ten minutes.

(Recess.)

Exam. Boat: Let us proceed.

By Mr. Colgren:

Q. Mr. Talbott, if you will refer to page 18 of your redirect statement, in your first paragraph you refer to the fact that some of the import/export traffic moves in car floats from Jersey City to New York pier stations, and

then is moved either by lighter or truck to the steamship piers.

Are there really any instances where you transfer freight from your New York pier stations to the steamship piers by lighter?

A. Yes, sir.

Q. If I understand you correctly, then this is a lighter [fol. 1626] movement between points on Manhattan Island?

A. That is correct.

Q. Three hundred and ninety-nine tons so moved, Mr. Colgren.

Mr. Colgren: Thank you.

Mr. Langdon: During the study period?

The Witness: During the study period.

By Mr. Colgren:

Q. Is that the 399 tons that you mentioned to me previously this morning?

A. Yes, sir. That was for September, 1956.

Q. You indicated that was included in the 8,873 within the category "via trucks and docks" on your table on page 11?

A. That is correct.

Q. Yes.

A. No, pardon me now, I believe I gave you the wrong figure there, on the 399. The 399 was trucked and the marine movement between the pier stations and the steamship piers in New York was 692 tons.

Q. 692?

A. Yes, sir. And that appears on my page 11, if you will notice it "Total Lightered Via Pier Stations, 692."

Q. Yes. Thank you.

In your next paragraph, you discuss pier station operation.

A. Yes.

Q. Could you indicate for me the period involved in the development of those costs?

[fol. 1627] A. Do you mean actual pier station numbers, I suppose?

Q. Yes, please.

A. That was Piers 20, 21, 22 and 23 was one operation.

Q. Could you tell me which that is, and the tonnage involved for those piers?

A. I am just trying to find the tonnage for the piers, Mr. Colgren. That is the part you are talking about.

I don't seem to have that actual breakdown for piers here with me. I don't have that breakdown for piers.

Mr. Langdon: Can we supply that information later, Mr. Colgren?

Mr. Colgren: Yes.

Mr. Langdon: Do you mind restating exactly what you want us to provide, Mr. Colgren?

Mr. Colgren: Yes. Mention is made in Mr. Talbott's statement of three types or three breakdowns, rather—general carload traffic, carload forwarder traffic, and LCL traffic, and those are the categories that we would like to have the tonnages for, in relation to the piers through which they are handled.

Mr. Langdon: These are New York pier stations, I take it.

Mr. Colgren: Yes.

Mr. Langdon: You want them in relation to the piers over which type are handled, rather than on the consolidated tonnage of all the piers, as I have shown on page 19? For what period are you interested?

[fol. 1628] Mr. Colgren: The study period.

Mr. Langdon: The study period?

Mr. Colgren: Yes. The data must have been developed in the study.

By Mr. Colgren:

Q. Is the Manhattan 26th Street station included in your study?

A. You mean the 23d Street, the 26th Street Station.

Q. Yes, sir.

A. None of that traffic moved through that station.

Q. Mr. Talbott, does the B.&O. or the Staten Island Rapid Transit serve the so-called free zone on Staten Island?

A. It is in the railroad owned by the Staten Island, and if they have any railroad connections they serve it.

Q. Was there any foreign traffic moving through that facility, or that situs during the month of September?

A. I made no attempt to single that out, Mr. Colgren. If it moved, it is all in the total.

Q. That free zone on Staten Island—well, I don't want to testify here. Could you tell us the location with reference to St. George?

A. I don't know exactly where it is, Mr. Colgren. I know it is over there.

Q. And it is served by the B.&O.?

A. If the rail connection is served by the B.&O., and I am sure that it is.

[fol. 1629] Q. On page 23 of your statement, you indicate that car detention in your lighterage yard averaged 5.24 days.

This traffic that is destined to lightered—is it the practice of the B.&O. or Central of New Jersey to hold that traffic in the cars?

A. Well, I think like any railroad, it depends upon how badly you need the cars. If you can save operating expenses by leaving it in the cars, you will probably do it. But if you need the equipment you will probably unload it on the piers. I don't think there would be any set rule for it.

Q. The traffic actually has to be unloaded from the cars in order to be put into the lighters, as we understand, so that this car detention of 5.24 days in the lighterage yard is actually a result of an operating practice of the CNJ, or B.&O.—is that right?

A. To some extent. I don't think you—you may have to have a much larger lighterage facility. If you attempted to unload every car every night, I think you would have to have much larger docks to take care of it all. I think it would have to be worked out to get the best operation, the most economical operation.

Mr. Colgren: All right, sir. I think that concludes my cross-examination, Mr. Examiner.

Now Mr. Myskowski has a few questions to ask of Mr. Talbott.

By Mr. Myskowski:

Q. Mr. Talbott, I believe yesterday in answer to Mr. [fol. 1630] Langdon's question you gave a figure of 318,145 tons of import/export traffic handled by Baltimore & Ohio Railroad during either the year 1956 or the year ending August 30, 1956. Is that correct, sir?

A. I think it was for the year 1956.

Q. All right.

A. For the year 1956.

Q. During the month of September, 1956, how many tons of import/export traffic moved via the Baltimore & Ohio Railroad?

A. During the year?

Q. I am sorry. During the month of September, 1956, at the port of New York.

A. Are you trying to separate the Baltimore & Ohio from the Central Railroad? Is that what you have in mind?

Q. No. You gave me the figure of 318,000 tons moving during 1956 by the B.&O. at New York.

A. That is right.

Q. And for example, on page 38 of your cost study, you indicate that there was a total of 11,647 tons moved by the B.&O. which were handled via lighters.

A. What page is that?

Q. Page 38, sir.

A. This is the traffic handled by lighters during the month. What is your question now?

Q. I am trying to find out how much traffic handled by [fol. 1631] the Baltimore & Ohio moved in import/export during the month of September, 1956, through the port of New York.

You indicate here that there were 11,647 tons.

As I understand it, not all of that was import/export freight.

A. That is correct.

Q. What part was?

Mr. Langdon: Do you have that figure, Mr. Talbott?

The Witness: We based our figure on a cost study to get the average cost and my cost figures here do include the domestic traffic, naturally.

I don't know if I have—I don't think I can get that out of these papers here.

By Mr. Myskowski:

Q. Would it be safe to assume it would be something less than 11,000, during the month of September?

A. Well, I am sure—I don't know whether the Baltimore & Ohio handled much domestic. We handled some, probably, yes.

Q. Something less than 11,000 would be—

A. Yes.

Q. —the amount of import/export freight?

A. We probably handled some domestic traffic, sure.

Q. I am asking you, Mr. Talbott, is it safe to assume the amount of import/export freight handled by the Baltimore & Ohio Railroad, through the port of New York, in [fol. 1632] the month of September, 1956, was something less than 11,000 tons?

Mr. Langdon: If I may just for purposes of clarification here, Mr. Myskowski—your figures were made, were they not, Mr. Talbott, for the pooled B.&O.-Jersey Central operation?

The Witness: That is correct.

Mr. Langdon: As I understand this question, it concerns only the traffic of the B.&O. Is that correct?

Mr. Myskowski: That is correct.

Mr. Langdon: Did you have any figures for the B.&O., here?

The Witness: I do not have the figures here.

By Mr. Myskowski:

Q. On page 37, it says B.&O., the tonnage moving through Jersey City-St. George—

A. You are asking me to separate the domestic out of that.

Q. I will even take your statement the domestic was not very much.

A. I don't know how much it was, but go ahead.

Q. But the figure would not be above 11,647. Is that right?

A. That is correct.

Q. If I divide 318,145 by twelve, I get a figure of 26,500, and if you moved only 11,000 during the month of September, would you say that was a representative month?

Mr. Langdon: I think this calls for maybe a statement of counsel at this point.

We undertook to provide and show, despite the fact that it was not our burden to do so, the cost of handling New [fol. 1633] York export/import freight movement in what is the normal manner of providing that movement.

We did not include in any of our costs showing any or such direct transfer freight as there may be in export/import movement.

Now, that was done because the lighterage movement is the normal method of handling, as we understand it, at New York, the normal method of handling import/export traffic.

Now, it is true that we did apply these lighterage costs against certain traffic which, at other ports, such as Baltimore and Philadelphia, would be handled in bulk service, with an expensive transfer service and transfer facility.

Now, we did not provide any costs at New York for any similar operation of that kind because it is our understanding that new facilities, if New York is able to divert this traffic from Baltimore, would be required at New York.

We have no information on the costs of handling bulk traffic at New York if and when these special facilities are provided.

Moreover, in order to determine that, you have to know where these special facilities are located. Perhaps Brooklyn would like a piece of this bulk traffic, in which case water service would be necessary. Perhaps all of it would not be concentrated over in New Jersey.

In any event, we believe that that is part of the burden of proof to be assumed by these railroads that want to [fol. 1634] reduce their rates in order to get this bulk traffic from Baltimore.

They are perfectly free to come in and show what their prospective costs are. We do not undertake to do more than show the cost of the traffic that is moving by the predominant service at New York.

Mr. Colgren: Of course, Mr. Examiner, it must be understood that what has been developed here are unit costs and they have been applied to traffic in a purported cost application in Mr. Heywood's exhibits 5 and 6, to, I think, his Exhibit 50, or rather his—I guess that is clear.

In the development of those unit costs, it is very apparent that it is necessary to include all types of traffic which moved through the port of New York.

Now, we find here that there has been, arbitrarily in our view, some—there are some 28,031 tons of scrap iron and import ores which have been arbitrarily left out of the study of the costs at New York.

Now, we understand from Mr. Langdon that that was on the basis that that is not the ordinary method of handling traffic at the port of New York.

In my capacity as a representative of the New York Central, I can now state for the record, I think, in order to clear that up, that a very substantial portion of New York Central traffic is handled direct from ship to car, at the port of New York.

Now, in arbitrarily dismissing large segments of tonnage [fol. 1635] which are handled direct from ship to car, I think that we can reasonably assume that the costs purporting to show the costs of handling all traffic through New York are lacking. They are seriously in doubt, and we intend to make that criticism, as I am doing now, and attempt to prove that that is a fact.

Mr. Langdon: Are you going to provide us with cost material on this type of traffic?

Mr. Colgren: Mr. Langdon, no.

Mr. Langdon: All right.

Mr. Colgren: I have insisted from the beginning of this proceeding that costs are not the determining factor in the disposition of this case. It has been your attempt to establish that we can not handle traffic profitably through the Port of New York and therefore our rates, our proposed rates, are subject to the Commission's appraisal of them as being unreasonable for that reason.

Now, we maintain, of course, and have from the beginning—

Mr. Macleay: Mr. Examiner, is it necessary to argue the case at this time?

Mr. Welsh: No one is arguing the case. It was Mr. Langdon who was doing it.

Mr. Langdon: I simply pointed out why we excluded certain traffic from our cost studies. I didn't want the impression in the record we are undertaking to do more than to cost out the freight which receives a lighterage [fol. 1636] service in New York. That is what we undertook to do. The burden is on the other side, if there is other traffic handled at New York, to show us the costs of that.

Mr. Colgren: Well, I think I should be permitted to make my point that I started out—the fact that we have not, from the beginning, considered costs determinative, and that we do not feel that a burden has been put on us, presumably, by nature of the case being cast in the form of an investigation and suspension proceeding, which requires by that fact the presentation of a cost study.

We intend to establish the reasonableness and propriety of our rates in other methods, and approved methods.

But I want to point out for the Examiner and the consideration of the Commission that these costs which have been applied by Mr. Heywood on all traffics according to Mr. Langdon, in a very representative statement, do not represent the costs of handling all traffic through New York.

Mr. Langdon: Mr. Examiner, Mr. Heywood's exhibits, it is true, his costs were applied for the most part to the traffic handled in lighterage service. I think there were two or three exceptions. There was one bulk commodity which under the revenue indicated the reduced rate would not be compensatory even if only the line haul costs were taken into account, irrespective of the terminal costs. There was another, chrome or and manganese, to which we assigned lighterage cost mainly as bait. We were hoping [fol. 1637] the other side would come through and show us what their plans were from the point of view of actual costs in the future. Also, we understand a certain amount of this chrome and manganese in small amounts is handled in New York in lighterage service.

Mr. Myskowski: Mr. Examiner, can I say just one thing? I think it is obvious that if you handle package freight and you handle bulk freight at Baltimore and New York, the cost of handling the package freight will be higher than the cost of handling the bulk freight.

At New York there is a tremendously large proportion of package freight. At Baltimore, it is bulk. When we get through, I think we will show that the New York rates, based on their studies, are compensatory and that the revenues at New York more than compensate for any purported—

Mr. Macleay: Mr. Examiner, I am going to object to this record containing material of that sort from counsel at this time, and I move to strike.

Exam. Boat: I don't think it is necessary to—

Mr. Macleay: I might add that it is necessary to prove this case and not talk about it.

Exam. Boat: I do not think it is necessary to argue any further at this time. There are obviously great differences shown in the record with respect to bulk traffic, and other heavy loading traffic and this traffic that is lightered, and [fol. 1638] that is indicated on Mr. Talbott's statement, just looking at that at page 19. It shows the average tons per car is less than ten tons per car, which is substantially less than that shown in some of Mr. Heywood's exhibits, for this whole body of traffic that we are concerned with here.

A. May I say that ten ton per car was the pier station traffic, and that is not representative of all lighterage traffic, Mr. Examiner.

Lighterage traffic going through the lighterage station loads higher than ten tons.

Exam. Boat: Yes. I understand that. But those costs are carried into the aggregate costs, I understand. Those pier station costs are carried to the aggregate costs, are they not?

The Witness: Yes, sir.

Mr. Myskowski: Could we go back to the pending question, Mr. Examiner?

Examiner Boat: Read the question.

(Question read.)

Mr. Myskowski: Is there still objection to the question:

Mr. Moerman: There never has been objection. Just a speech.

The Witness: This was all the traffic that was handled by the Baltimore & Ohio in September. I can tell you that.

By Mr. Myskowski:

Q. This was what, sir? I am sorry, I did not hear your [fol. 1639] answer.

A. Yes. This was the total traffic handled through the lighterage station in September.

Q. Would you say that was a representative month?

A. I think it is a representative month. I don't know that—

Q. What I have in mind is this. On page nine, you show marine expense.

A. Yes.

Q. You show such things as—

A. I don't think that includes all traffic in New York. My study does not include all traffic in New York.

Q. It does not include all B.&O. traffic at New York, sir?

A. No, it does not.

Q. What is missing now?

A. Well, there is a little bit of car float traffic to be added to that.

Q. I asked you specifically in the record about the car float traffic and you said there were only seven—

A. That is correct.

Q. Is that what you are referring to?

A. That is correct. It is—

Q. What else?

A. I would have to look in that traffic department figure to see just what it covered. I don't know what the traffic department—that was made up by the traffic department [fol. 1640] from bills and so on, that 318,000.

Q. On page nine, you show marine expenses, Mr. Talbott, and for example, in floating equipment, maintenance, you show B.&O. floats and lighters, $54,361. If you had handled twice or a little more than twice as much tonnage,

then instead of having a cost of something like five dollars it would only two and a half. Isn't that right?

A. You would not handle it with the same equipment. No, that would not hold, absolutely not.

Q. You would not handle it in the same equipment?

A. You would have more tug tows. More equipment and more everything to handle it.

Q. Isn't this the maintenance for your local fleet you have in here?

A. Yes. But you are assuming if you doubled your business you could handle it with this same fleet—and that is not a proper assumption.

Q. You are not doubling your business? The business on the average is 26,000 tons. I am saying if you had an average month and you used it with your total fleet.

A. Well—

Mr. Langdon: Is that question comprehensible to you, Mr. Talbott?

Exam. Boat: No, it is not.

The Witness: I don't understand exactly what you are [fol. 1641] driving at.

By Mr. Myskowski:

Q. I am saying this, sir. If during the month of September you had 26,500 tons of import/export freight, which is your average month for the year, if the figure you gave us for the year is correct, then you would have 26,000 to divide into your total for equipment maintenance and you would come out with a figure less than half of what you would come out with now. Isn't that right, sir?

A. Yes. But your question is not proper, because I think I thoroughly explained all of this equipment is pooled and the B.&O. and Central Railroad Equipment is all pooled, and it is a pooled operation and you have to consider the operation jointly in order to arrive at a question and answer you are suggesting.

Q. I am sorry. I thought you told us this figure is your average for a three year period.

A. It is.

Q. I am trying to match that up against your average traffic.

A. The only objection I am making is your trying to average up the B.&O. cost of maintenance against the B.&O. traffic, whereas the B.&O. equipment is used to handle Central Railroad traffic as well as B.&O. traffic. It is all pooled together.

Q. I understand that. I had difficulty with it the last time. But I am trying to point out that if you had had the additional amount of tonnages to bring you up to the average month, the divisor would have been greater and [fol. 1642] the unit costs would have been less.

If it was confined to the B.&O. it would be less than half; but if it were combined with the C.N.J. it would knock down a substantial portion.

A. Naturally, if you divide a fixed amount by a greater number, you are going to get a smaller answer, if that is what you are trying to say.

Q. Yes.

Mr. Langdon: Didn't you use as a divisor a figure which contained domestic traffic as well?

A. Yes.

Mr. Langdon: You did not use the figure on—

The Witness: The figure referred to the amount noted of 56,404. That included the total tonnage which was lightered through our lighterage stations for the month.

Mr. Langdon: Domestic, as well?

The Witness: Yes.

By Mr. Myskowski:

Q. I don't know whether is it quite proper to have counsel advise the witness what his answer should be?

Mr. Langdon: Maybe not, but I was trying to get it clear and get it right.

Mr. Macleay: I am interested in having the record clear, whether cross-examining counsel is or not. I am beginning to doubt it from the manner of his questions.

Exam. Boat: Let the cross-examination continue here.

[fol. 1643] By Mr. Myskowski:

Q. As I understand it, you do not include in the total tonnage the 28,000 tons consisting of 14,288 tons of scrap iron and 13,743 tons of ores. Is that correct, sir?

A. I made no cost study for that.

Q. Do you know that was included in Mr. Moerman's traffic study?

A. Yes, it was.

Q. It is involved in this case, sir?

A. Well, as I understand it, all our traffic moved to nearby points and not to differential territory, so I don't know whether it is involved. I would not think it is involved in the case.

Q. You are sufficiently familiar with these work papers to know no attempt was made to segregate CFA traffic from anything else? You know that you included domestic traffic?

A. Yes.

Q. You are trying to get total costs?

A. I do know what was in the traffic study. I have a general idea.

Q. What kind of ores were these?

A. Chrome and others, I am not sure what others.

Q. You are sure none of these moved to CFA?

A. Yes. For the month of September, none moved to CFA.

Q. Did you make similar omissions to your Baltimore study? Did you go through and find out what moved to CFA there?

[fol. 1644] A. We made no omissions in the Baltimore study because we did not include in the Baltimore study the bulk commodities which move over the piers specially adapted for that purpose.

Q. What you were trying to develop at New York was a cost per ton for moving non-bulk or package freight. Is that it?

A. We were trying to develop in New York a cost for moving the traffic. That is, the majority of the traffic and the majority of the tonnage which moves in New York Harbor, and that would be the general commodity.

Q. If you had a total of something like 42,000 tons of import/export freight which you included, why would you not want to include a substantial item such as 28,000 additional? Isn't that moving through New York?

Exam. Boat: What is your question, why would you not want to include 28,000 additional?

A. You mean you are referring back again to the calculation you made of the 313,000?

By Mr. Myskowski:

Q. No, I am referring to the scrap ores which you excluded. That is traffic moving through New York, is it not, sir?

A. Yes. But as I said before, my cost study was designed to show the cost of transporting the general run of traffic in New York, the same thing as Baltimore.

Q. Don't you think 28,000 out of a proportion of 78,000 is something that would help to show what the general run [fol. 1645] of traffic is.

A. We have a lot more than that at Baltimore and I left all of that out—a way over 28,000 tons.

Q. You said awhile ago you left it out because it would distort the cost figures. Why would it distort them?

A. I think it would present an abnormal picture because the majority of traffic in New York moves via harbor movement.

Q. If you want to get an average of what it costs, you have got to include the minority with the majority, do you not?

A. I don't think I would want to use an average figure of that type, with all the heavy commodities mixed in with it. Not at Baltimore or New York.

Q. You mean what you are trying to do is get a figure which would conform to the package freight or the freight which was individually handled at New York? Is that what you are striving for?

A. I think I stated it clearly. I developed a cost to apply to the general movement of traffic in New York harbor, the way the majority of the commodities move and the way

chrome ore also can move under the traffic, which is a harbor marine movement attached to the rail movement.

Q. Then you would say such a cost should be compared only with the revenues from traffic which moves in such a manner and certainly would not be appropriate to compare with the revenue from traffic such as ores, or scrap iron, [fol. 1646] as Mr. Heywood has done. That would not be proper, would it.

A. I think that some of the traffic moves via lighter and I think it is all right to do it that way.

Q. But you left out 28,000 out of 78,000.

Mr. Langdon: We would be glad to have you come in, as we said before, to show what the costs are. We have told you we left it out. I think there ought to be an end to the examination on this point. We left it out. We told you the reasons why it was left out. Whether the leaving out was right or not, it is a matter for argument. We think it is proper.

By Mr. Myskowski:

Q. Would you admit, Mr. Talbott, the average costs at New York would be substantially lower if in your computation you had included the scrap iron and ores which actually moved through New York?

A. I have not made any study on the scrap iron and the ores, and am not going to comment on it.

Q. What did you have in mind when you say they might distort the costs?

A. At the time I thought they might have lowered it somewhat, but I don't know what the costs are for the ores or the scrap iron.

Q. The cement moved over the lighterage piers. Is that right?

A. A special pier for that purpose.

Q. In computing your costs for the lighterage piers, did you include the 23,000 tons of cement in your divisor?

[fol. 1647] A. I think I have pointed out a half dozen times that I omitted the costs and also omitted the tons in arriving at the average cost for operating the lighterage facilities.

Q. Would that not also have resulted in lower costs?

A. It most probably would have.

Q. Mr. Talbott, at page 13 you state, in the second full sentence, "CNJ and B.&O. equipment is initially assigned to the pool on the basis of anticipated requirements of each company. Any excess or deficit in the units of equipment furnished to the pool by either company in any one month is adjusted in the following month."

Do I understand this to mean that if the B.&O. handles twice as much tonnage, it throws into the pool twice as much equipment, of if they each handle the same amount?

What do you mean by those two sentences?

A. I have not gone into the method I used for equalizing that equipment, but they do adjust it monthly.

Q. What do you mean by the amount that is contributed?

A. The amount contributed to the pool by each company. I do not know what the norm is for that. I am not interested in finding out the norm. I am interested in developing the contributions are equalized for both companies.

Q. I was interested because I had thought it contradictory. You have no idea how, but it was based on the requirements of each company. Can I believe this statement is so?

[fol. 1648] A. Yes.

Q. If the CNJ handled twice as much tonnage as the B.&O. in a year, were they required to contribute twice as much equipment?

A. I just stated what the norm was for dividing up that equipment, I do not have with me, the details of it. But there is some method used for assigning the equipment.

Q. Is it in accordance with the requirements?

A. The anticipated requirements, but I do not know what the norm is for judging those requirements.

Q. Can we assume this? In the year you used, 1956, if the CNJ had almost twice as much tonnage as the B.&O. they would be asked to contribute twice as much equipment as the B.&O.?

A. You are speaking only about twice as much tonnage at the lighterage piers. There are also pier stations to be reckoned with and the tugs, of course some of both, so it

is a little more complicated than just a simple tonnage proposition.

Q. Well, sir, if the record shows that the B.&O. had three times as much marine equipment as the C.N.J. and was handling half as much tonnage as the C.N.J., could I conclude from that the C.ofN.J. was either more efficient or that the B.&O. had excess equipment?

A. No, you can't because the whole operation is performed by the Central Railroad of New Jersey. They operate the pool.

Q. With what equipment?

[fol. 1649] A. With the B.&O.-Central Railroad of New Jersey equipment all in there together.

Q. In the proportion of the traffic, you say?

A. They have a basis for doing it. You have to take into account the floating cars. The B.&O. has a lot more cars handled on floats than the Central Railroad does. That requires tug time. It may not require tugs and barges. But it requires tug time so you can not just base it on the tons lightered. The whole picture has to be considered.

Q. Mr. Colgren asked you in connection with the tonnage which you show on your summary sheet—we still have a great deal of difficulty, at least I do on that, Mr. Talbott. You show something like 41 or 42,000 tons of freight moving through your lighterage piers, and in addition you had 23,000 and some odd tons of cement which are not included in that.

You deduct from the 41 or 42,000 some 8,000—well, it's 7,000 or 8,000 tons which were trucked. My question is this:

Did the tons which were trucked also move over the lighterage piers?

A. They did not. Only those—no, none of it did move over the lighterage piers.

Q. How was it handled?

A. It was trucked from Manhattan. The trucks operated over on the ferries, I suppose, or came through the tunnels to Jersey City and parked at the lighterage piers, and the [fol. 1650] traffic was unloaded from the trucks to go to the trucks or the lighterage piers, and thence to the cars. There is no lighterage moved involved. It is trucked in lieu of lighters.

Q. They use the piers?
A. They use the piers, yes.

Exam. Boat: You said none of it moved over lighterage piers. I think that was the statement.

A. It moved over the lighterage piers, but it did not get a lighterage movement.

Exam. Boat: I see.

By Mr. Myskowski:

Q. At the top of page 22, Mr. Talbott, you have a long sentence there which states in part, "Whereas at New York 100 percent of the import/export traffic received either a marine movement or a truck handling in lieu of lighterage."
A. I was requested to revise that this morning and forgot about it. That should be changed from 100 percent to the major portion.

Mr. Welsh: What page is that?
Mr. Myskowski: Page 22.
The Witness: Page 22 of the written statement.
Mr. Langdon: That assumes, of course, that New York means the port of New York.
Mr. Langdon: And not New York City.
Mr. Myskowski: I think that is all, Mr. Examiner.
[fol. 1651] Exam. Boat: Very well.
Does that conclude the cross-examination? Is there any redirect?
Mr. Langdon: No, sir.
Exam. Boat: You are excused, sir.

(Witness excused.)

Exam. Boat: Is there anything further now to take care of at this time, except the indication of the adjourned—
Mr. Colgren: I think you were going to make a matter of record the days set for rebuttal hearing.
Exam. Boat: That is right.
The filing of the rebuttal testimony by the New York lines will be set for May 22—on or before that date.
And the date of the rebuttal hearing will be June 16th, at 9:30 a.m. here, and this hearing will stand adjourned until that date.

(Whereupon, at 12:35 p.m. o'clock, the hearing in the above-entitled matter was adjourned until 9:30 o'clock a.m. on Monday, June 16, 1958.)

[fol. 1651a] Secretary's Certificate to transcript (omitted in printing).

[fol. 1652]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I&S Docket No: 6615

FSA Docket No: 32204

[Title omitted]

Monday, June 16, 1958

Met, pursuant to notice, at 9:30 a.m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1654]

PROCEEDINGS

Exam. Boat: Let us proceed, gentlemen.
Mr. Warnock: We will call Mr. Thomas, Mr. Examiner.
Exam. Boat: You have been previously sworn?
Mr. Thomas: That is correct.

ALVIN K. THOMAS having been previously sworn, testified as follows:

Direct examination.

By Mr. Warnock:

Q. Mr. Thomas, will you state your full name and address?

A. Alvin K. Thomas, 143 Liberty Street, New York, N.Y.

Q. You have been previously sworn in this proceeding?

A. That is correct.

Q. You are the Alvin K. Thomas who submitted a verified statement initially, and submitted a further rebuttal verified statement in this case?

A. That is correct.

Mr. Warneck: The witness is available for cross-examination.

Mr. Langdon: Has this statement been given a number?

Exam. Boat: His previous statement was Exhibit No. 8, and this supplemental statement may be identified as Exhibit No. 105.

(Verified Statement No. 105, Witness Thomas, marked for identification.)

Cross examination.

[fol. 1655] By Mr. Langdon:

Q. Mr. Thomas, at the last hearing, you undertook to inform yourself as to the scope of the traffic study which the Lehigh Valley contributed, is that correct?

A. That is correct.

Q. And you tell us now, in this supplemental statement, that grain moving over the Lehigh Valley Railroad was in fact included in those traffic studies?

A. That is right.

Q. Mr. Thomas, was the grain that your included in your traffic study confined to grain that originated in differential territory?

A. Yes.

Q. It did not, in other words, include any grain originating in Western Trunk Line Territory and moving to differential territory on either combination or proportional rates?

A. No, sir.

Q. Did you make a study of this Western Trunk Line grain which the Lehigh Valley loaded during these three years?

A. Yes, sir.

Q. Yes, sir?

A. Yes, sir.

Q. What did that grain amount to—what did that tonnage amount to?

A. In the period 1955-1956, that grain totalled 324 cars from affected territory, and 1440 cars from unaffected territory.

[fol. 1656] Q. Now, I don't know that I understand the distinction.

Describe, now, the origin of the 324 cars, generally—I mean the origin territory.

A. I am speaking solely of wheat, now. I can give you the same thing on barley and rye.

Those figures are comprised predominantly of 119 cars from Indiana points, and 134 cars from Illinois points. That would be all rail grain.

Q. Would that grain have originated in Illinois or Indiana, or transited there?

A. I would say, without going back into it, that that could possibly be transited there, but, for our records, it shows as origin territory. In other words, we differentiate that grain from ex-lake grain handled by my railroad from Buffalo.

Q. Now, were those 324 cars included in your traffic study?

A. That is correct.

Q. You mentioned an additional movement of 1440 cars. What was the origin territory of that grain?

A. That was 1440 cars, and that is ex-lake grain that comes to the Lehigh Valley Railroad at Buffalo.

Q. Well now, where is the grain, Mr. Thomas, that originated in Western Trunk Line Territory, west of the Mississippi River?

A. That would be in the 1440 cars—ex-lake.

Q. Didn't you have any all-rail grain that originated in Western Trunk Line Territory?

[fol. 1657] A. No.

Q. Are you sure?

A. Reports made by our auditing department did not indicate any grain originating in that territory, other than the ex-lake, which we handled from Buffalo.

Q. Did you ask them to give you the grain originating in that territory?

A. This study prepared by the auditing department took Western Trunk Line Territory into consideration. Insofar as grain is concerned, the grain which the Lehigh Valley handled, that originated in Western Trunk Line Territory, comes to us in ex-lake movement and inasmuch as Buffalo is geographically not considered a part of affected territory, it does not reflect into the figures from affected territory origins.

Q. Did you ask your auditing department to supply you with grain handled by the Lehigh Valley, that originated in Western Trunk Line Territory, Mr. Thomas, aside from that which comes to you ex-lake?

A. The study was made on that basis.

Q. And you had none?

A. We had none, no.

Mr. Langdon: That is all I have.

Exam. Boat: Any further questions on cross-examination?

OFFERS IN EVIDENCE

Mr. Warnock: I offer the statement numbered 105 in evidence.

Exam. Boat: That statement will be received in evidence.

[fol. 1658] (Respondents' Exhibit No. 105, Witness Thomas, received in evidence.)

Mr. Moerman: At this time I wish to offer the original verified statement of Frank Sauter, and ask that it be identified, Mr. Examiner.

Exam. Boat: The statement of Frank Sauter may be identified as No. 106.

(Respondents' Exhibit No. 106, Counsel Moerman, marked for identification.)

Mr. Moerman: Mr. Examiner, I have been advised that the witness Sauter was to be present for cross-examination, and that Mr. Langdon subsequently talked with Mr. Myskowski of my office and waived cross-examination, so that, if no other parties have any cross-examination, I would like to offer this statement No. 106 in evidence.

Exam. Boat: Is any further cross of Mr. Sauter requested?

(No response.)

Exam. Boat: There seems to be none, and the exhibit is received as Exhibit No. 106.

Mr. Moerman: Thank you.

(Respondents' Exhibit No. 106, Counsel Moerman, received in evidence.)

Exam. Boat: Let us proceed, gentlemen.

Mr. Moerman: Mr. Examiner, at this time I should like to offer for identification the verified statement by Edward [fol. 1659] K. Laux in this proceeding. He has previously been sworn and has previously testified, and I have handed the original copy to the reporter.

Exam. Boat: This statement will be identified as Exhibit No. 107, Witness Laux.

(Respondents' Exhibit No. 107, Witness Laux, marked for identification.)

Mr. Moerman: Witness Laux is tendered for cross-examination.

Edward K. Laux having been previously sworn, testified as follows:

Cross examination.

By Mr. Macleay:

Q. Mr. Laux, as I understand it, your exhibit A-1, which is appended to the document marked for identification as Exhibit 107—

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

By Mr. Macleay:

Q. Your exhibit A-1, which is appended to the document marked for identification as Exhibit 107 is in the nature of a recapitulation of the listings which you have made in A-2 and A-4, is it not?

A. Well, I don't know whether I would call it a recapitulation or not. It's a sort of analysis we attempted to make of the Hamill exhibit.

Q. I am directing my attention, now, solely to Exhibit [fol. 1660] A-1. Do you have it before you?

A. Yes, sir.

Q. Where you say "1281 sailings which included both New York and Baltimore," that figure, is taken from the Hamill exhibit?

A. Yes, sir.

Q. Then your figure of "1484 sailings from New York—Not from Baltimore," is that taken from the Hamill exhibit?

A. Yes, sir.

Q. Then your figure of "171 sailings from Baltimore—Not from New York" is that taken from the Hamill exhibit?

Exam. Boat: Can you identify, at this point, WSH-1?

Mr. Macleay: Mr. Examiner, may we be off the record?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record. That was either 70 or 71.

By Mr. Macleay:

Q. This figure that you show, of 791, is that taken from your Exhibit A-2?

A. Yes.

Q. Then, your figure of 278, indicating "Passenger and Cruise Vessels," and the figure of 121, "Combination Passenger and Cargo Vessels," is that taken from your Exhibit A-4?

A. That was taken from the Hamill exhibit.

Q. They were taken from the Hamill exhibit?

A. That is correct.

Q. Can you tell me where, in Hamill's exhibit, you found [fol. 1661] those figures?

A. Well, if you will look at my exhibit A-4—

Q. That's what I asked you.

Did you get these figures that you put on your Exhibit A-1 from the computations you made in Exhibit A-4?

A. No, A-4 is made up from Hamill's exhibit, and so was A-1.

In other words—

Q. Mr. Laux, please don't fence with me. I merely want to identify, from your testimony and from your exhibits, where you got the figures that are on A-1.

The only figures that you have on A-1 are figures drawn from your A-2 or from your A-4, is that not correct?

A. A-4 was prepared after we made A-1.

Q. After you made A-1.

A. Yes.

Q. Well then, do you have the figures from which you prepared A-1?

A. You mean the 278 and 121?

Q. Yes.

A. No; we took those from Hamill's exhibit. We came up with them as a result of a study of the Hamill exhibits.

Q. Then you tabulated the results of that study in your A-4, is that correct?

A. That's right.

Q. Well, all the figures that are shown in your A-1 can be [fol. 1662] found either in the Hamill exhibits, or from your A-2 or A-4?

A. I think that is a good statement.

Q. Now, referring please to your A-2, you indicate as your source, the United States Department of Commerce.

Can you tell me what agency of the Department of Commerce provided you with these figures?

A. I should know, but I don't have that with me.

Q. Did you obtain the figures?

A. They were obtained by my office, by our office.

Q. Did you make any comparisons of the figures shown here, or the information shown here, with the Hamill exhibits—I am speaking of you, Mr. Laux.

A. Did I personally?

Q. Yes, sir.

A. Well, I can't say that I went over it ship by ship, or page by page, but I made a study of it, and some determination of what we were going to show, and what we found.

Q. Are you familiar with the material that was furnished, as you say, to your office, by the Department of Commerce?

A. Only in a general way.

Q. Do you have that material presently in the hearing room?

A. No, not on this study, but—

Q. Is the person who made the study present in the hearing room?

A. No, he is not here—yes, he is, the party that headed up the study is here, Mr. Gilbert.

[fol. 1663] Q. Mr. Gilbert made the study?

A. Well, he headed up the study.

Q. Are you familiar with the procedure that was employed?

A. In a general way, yes.

Q. Let's start over again: What agency of the Department of Commerce provided the basic data which you employed?

Mr. Moerman: The witness stated that he does not know.

Mr. Macleay: Then I move, Mr. Examiner, that this exhibit be rejected, unless and until either this witness who actually worked on it, can give us the information that is necessary, before we can properly analyze and evaluate it.

Mr. Moerman: Mr. Examiner, the exhibit very specifically states that the source is the United States Department of Commerce. Following Mr. Macleay's logic, we have got to get the individual from the Department of Commerce who prepared this study.

Now, Mr. Laux has half a dozen people working under him, and they prepared this study. It is an unreasonable suggestion.

Mr. Macleay: Mr. Examiner, I certainly think that we are entitled to inquire of the person who put this together. Mr. Laux did not do it. Mr. Laux doesn't even know where

they obtained the underlying data. I did not request, at this point, that the person from an unidentified agency of the Department of Commerce be provided for examination, although it very well may be that during the course of cross examination, it will prove to be necessary.

[fol. 1664] I might state, for the record, that certain data which we have obtained from an agency of the Department of Commerce is not in accord with these figures, that agency being the Maritime Administration. Now, if some other agency of the Department of Commerce provided other figures, as I say, it may very well be necessary for us to call some of these Government people who put these figures together, to determine why there are discrepancies.

Mr. Moerman: Mr. Macleay, if you will pardon me for a moment, I am informed that the Bureau of the Census and Statistics is the prime source of the figures shown on Exhibit A-2. Mr. Gilbert so informs me, and if you want to get more details from him, he is in the hearing room, and I will be delighted to have you do so.

Mr. Macleay: I suggest, then, Mr. Examiner, that the present witness, Mr. Laux, step aside and that Mr. Gilbert be sworn and that this be made his exhibit and he be subjected to cross-examination thereon.

Mr. Moerman: Mr. Examiner, this exhibit was prepared under the direction of Mr. Laux. If there is some information which counsel wants which is not immediately in the mind of Mr. Laux, we have the underlying dope here. We will be glad to supply it, but I don't think that the witness need step aside. He is sponsoring this exhibit; he is responsible for it; he is in charge of the group which prepared it.

[fol. 1665] Mr. Macleay: May I request, then, Mr. Examiner, that I be provided with the underlying "dope," as counsel has termed it. I would like very much to examine it. As a matter of fact, I have just asked the witness if it were available.

Mr. Moerman: One second, please.

This is IBM data, in New York, and it will be sent for today, and be present in the hearing room in the morning.

Mr. Macleay: Then I ask that the examination of Wit-

ness Laux be suspended until I have had an opportunity to examine that material.

Mr. Moerman: Mr. Macleay, let us not be unreasonable. You are not going to sit here in the hearing room and look over IBM cards. I have no objection to his taking them away and looking them over at some other time.

Mr. Macleay: I have already asked this witness if he could tell me the procedures that were involved in the production of his exhibits, and he has not been able to do so. Now, certainly, I must look at this underlying data. I must have an opportunity to determine what procedures were employed, before this exhibit can be demonstrated as meaning anything.

Mr. Moerman: You did not ask for the underlying data. You have had this thing for nearly a month.

Mr. Macleay: I thought we would have a witness who could tell me what it was.

Mr. Moerman: Even if the witness could tell you, and [fol. 1666] handed you a flock of cards, what would you do with them?

Mr. Macleay: I would ask him a few questions about them.

Mr. Moerman: Have you ever seen an IBM card? Its got holes in it—can you read holes?

Mr. Macleay: May we come to order, Mr. Examiner.

Exam. Boat: I think we ought to proceed with this witness. He is offered as the witness who is responsible for the exhibit, and I think we should proceed here, with the understanding that any underlying data that would be of any use would be furnished.

By Mr. Macleay:

Q. What information was requested from the Department of Commerce, Mr. Laux?

A. A run-down of all the dry cargo ships that cleared or entered the Port of Baltimore, during the period July to December of 1955.

Q. What do you mean by a "run-down."

A. A complete record of every ship that entered or departed.

Q. Do you have the letter which you directed to the Department of Commerce—your counsel advises me that it was the Bureau of the Census that you obtained this material from,—do you have a copy of that letter, so that we could be advised, and the Commission could be advised, just what it was that you requested?

A. No, we don't have any letter.

Q. Do you have a letter from the Department of Com-
[fol. 1667] merce transmitting that material, in which they advise you specifically, what they are providing you?

A. I will have to leave that to Mr. Moerman.

Mr. Moerman: The requested letter of transmittal, the cards, all will be flown down today.

By Mr. Macleay:

Q. Was this a specific request to the Bureau of the Census for this particular study, or was this drawn from material which you obtained in the regular course of business from the Bureau of the Census?

A. This was a specific request. We paid four or five hundred dollars for it.

Q. When you obtained this material from the Bureau of the Census, what did you do with it?

A. We analyzed and studied it, and deleted certain of the ships that came in in ballast and went out in ballast.

Q. You say that you studied and analyzed it?

A. Yes.

Q. What was the first step in that study, Mr. Laux?

A. To determine which vessels arrived with liquids, which were excluded, and the vessels which came to Baltimore to go to a shipyard or for some other errand.

At any rate, those vessels that did not discharge or load, we deleted those vessels from the study.

Q. I see. Then what did you do?

A. Then we tabulated them, like you see them in Exhibit A-2.

[fol. 1668] Q. Did you not make a comparison of this with Witness Hamill's exhibit?

A. No—why should I? These vessels were not shown in Witness Hamill's exhibit.

Q. How do you know that these vessels are not shown on Witness Hamill's exhibit, if you did not make a comparison?

A. Witness Hamill said he excluded all bulk carriers.

Q. Do you limit your exhibit A-2 to the bulk carriers?

A. No; A-2 has in it some vessels that carry general cargo, which could also carry bulk.

As I remember, I think we did compare this listing of vessels with the Hamill exhibit.

Q. Did you make that comparison, Mr. Laux?

A. Me personally?

Q. Yes.

A. No, sir; my staff did some of the work on it.

Q. May I inquire if the person who made that comparison is available for cross examination?

A. No, sir.

Q. Mr. Laux, referring to page 2 of your Exhibit A-2, you will note that the second and third vessels indicated are named the African Grove. There is indicated an entrance date, at Baltimore, of the fourteenth of July, with general cargo, and a clearance date of the twentieth of July, with general cargo, and another entrance on the [fol. 1669] twenty-fifth of July, general cargo, and a clearance date of the twenty-fifth, general cargo.

Would you consider that to be two separate voyages?

A. As far as my statement goes, that it; that's two separate voyages.

Q. What examination did you make to determine whether or not that was two separate voyages?

A. Well, I did not make any specific examination. I just took the figures as shown in the statement.

Q. Have you any idea what service the African Grove is in?

A. What service?

Q. Yes.

A. No, I don't know.

Q. You don't know that she operates in the african trade?

A. I don't know where she operates; all I know is that she carries cargo to and from Baltimore.

Q. Mr. Laux, I refer you to a copy of Witness Hamill's

Exhibit WSH-1, particularly page 6 thereof, and ask you to see if you find the vessel African Grove there listed?

A. It's on the listing.

Q. Will you look under the column headed "Baltimore" and see if it is there indicated as having called at Baltimore on July 14th and having departed on July 20th?

A. That is correct.

Q. Will you look further and advise me whether it is further indicated that as a part of the same voyage, she called again at Baltimore on July 25 departing the same date?

[fol. 1670] A. That is what is shown.

Q. Do you know whether the other vessels indicated in your Exhibit A-2, whether any of them are also listed in Hamill's exhibit to which we have referred?

A. As far as I know, they are not.

Q. Have you looked Mr. Laux?

A. I am looking at it now.

Q. The African Grove is certainly listed there?

Mr. Moerman: He may have overlooked or duplicated one or two, and to the extent that there are duplications and to the extent that a vessel was omitted from Mr. Hamill's study or was not omitted, we are quite willing to make the correction cheerfully.

Mr. Macleay: I might state, Mr. Examiner, that it has been impossible, in the time afforded us, to make a detailed check, and I frankly don't know how many vessels indicated in Witness Laux's exhibit marked for identification as A-2 may be also indicated in Witness Hamill's exhibit.

Mr. Moerman: I wish you had contacted me, Mr. Macleay, I would have been glad to give you all the information. You come here for cross examination, and you say you have not had time, that you are not prepared. I would have been willing to cooperate with you to every extent, to see that you were prepared.

Mr. Macleay: Even to the extent of having one of your people make a check to determine the accuracy of your exhibit?

[fol. 1671] Mr. Moerman: The check is to be made by your cross-examination. We have done the best we can.

Mr. Macleay: I intend to make it.

Mr. Moerman: You should make it now; this is the time for cross-examination.

Mr. Macleay: I intend to, counsel.

Mr. Moerman: Go ahead.

Mr. Macleay: Thank you.

By Mr. Macleay:

Q. Mr. Laux, did you, or whoever prepared Exhibit A-2, if you know—

Mr. Moerman: Just a moment.

Mr. Examiner, I don't like the questions to be put like that. It seems to me that the witness has stated that the exhibit has been prepared under his direction. I don't like this slurring of the witness, and I request that counsel be admonished.

Mr. Macleay: Mr. Examiner—

Exam. Boat: We know that the preparation of such an exhibit requires some extent, and he has called on others to assist him in its preparation, and he is the person responsible for it.

Mr. Macleay: I submit, Mr. Examiner, that that is not exactly the situation. This witness doesn't even know the procedures that were employed, and doesn't know what comparisons were made. I submit we should have a witness [fol. 1672] who is competent to direct his testimony to this exhibit, but if this is the only witness we have, it's the best we have, and we will try to make out with it.

Mr. Moerman: That is true of most of the witnesses that appear before the Commission. They get the results, get before the Examiner, and they testify, surrounded by lots of assistants.

Exam. Boat: Let's proceed, now.

Mr. Macleay: I might state, Mr. Examiner, that in our check we have found not only errors by Mr. Laux's staff, but errors by our own staff.

I would prefer to make the corrections by something in the nature of a late-filed exhibit. I understand that coun-

sel for the other side has been resisting anything in the way of further hearings.

Mr. Moerman: Not to a late-filed exhibit. I shall be glad to have such an exhibit made. It seems to me normal, in an exhibit of this size, you are going to have some errors, and I am not resisting that, and I would like to see them corrected, but I don't think you should come here and announce for a further hearing on this exhibit.

Mr. Colgren: I have no objections to corrections to exhibits which may be submitted within a reasonable time.

Mr. Macleay: We could save a tremendous amount of time, Mr. Examiner, if we could agree upon the form of a [fol. 1673] late-filed exhibit which would correct these errors that have been made by Mr. Laux and his staff and also correct the errors which they have found in Witness Hamill's exhibit.

I wonder if we might have a moment to discuss that with counsel to see if we can arrange an agreement as to the form of such an exhibit.

We might be able to reduce this cross-examination considerably.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Macleay: I think it will be desirable for us to continue this sampling, as that will eliminate the necessity for our taking each one.

Exam. Boat: Very well.

Mr. Colgren: May I ask a question for clarification.

Is it your purpose, Mr. Macleay, for you to compare Mr. Laux's exhibit with that of Mr. Hamill, and any duplications that occur in Mr. Laux's exhibit, that are not on Mr. Hamill's exhibit, you want to draw the attention of the Commission to those?

Mr. Macleay: Mr. Laux has already theoretically done so.

Mr. Colgren: Yes.

Mr. Macleay: And Mr. Laux has himself just pointed out that the first general cargo vessel listed in his exhibit, the African Grove, which is listed twice, actually made one

[fol. 1674] sailing, one voyage that involved both of those calls at Baltimore, and is listed in Witness Hamill's exhibit at page 6—

Mr. Colgren: My point is, you are quarreling only with those ships listed in Mr. Laux's exhibit A-2, which are also shown in Hamill's exhibit, Mr. Laux having indicated that those were omitted from the Hamill exhibit, is that right?

Mr. Macleay: I won't say I am quarreling only with that—I am not quarreling with anything. I disagree, of course, with that, and there are some other things in here with which I am not in complete agreement, and which I intend to question him on.

By Mr. Macleay:

Q. When you found a vessel, the complete itinerary of which had been omitted from the Hamill exhibit—and I hope you will agree with me that such omission would be through inadvertence—did you make any effort to determine whether or not that vessel had also called at New York?

A. No, I did not. As far as the vessels I show here, the statement only shows movements to and from Baltimore, and I made no effort whatever to determine whether or not these vessels called at New York, or any other port.

Q. Yes, Mr. Laux, in your exhibit A-1, you add every such sailing indicated in your A-2 to the Baltimore sailings?

A. I did that because Mr. Hamill said, in his testimony, that he omitted bulk-carrying vessels to and from Baltimore and other ports, but didn't do it from New York.

[fol. 1675] Q. But you also added 96 general cargo entrances, and 129 general cargo clearances, didn't you?

A. Where did I add that?

Q. Excuse me, I mean clearances. You did not add entrances on your A-1, but only clearances.

A. That is right.

Q. Included in that 791 sailings which you added to the Baltimore totals, are 129 with general cargo, as indicated in your A-2, is that not correct?

A. That is correct. We evidently found that those ves-

sels were omitted, despite the fact that they were listed by the Bureau of the Census as carrying general cargo.

Q. That's right.

Did you make any effort to determine whether or not those vessels also called at New York, on the voyages that were omitted from the Hamill exhibit.

A. No, I could not see the occasion for doing it, because Mr. Hamill's exhibit was directed to one thing, to show that New York had so many more sailings, so that Baltimore had a lot less sailings.

Q. So you added some more to Baltimore, but even if those same vessels that you added to Baltimore also called at New York, you did not think it proper to add them to New York, for the purpose of comparison?

A. I would not know whether they were to be added to [fol. 1676] whether they weren't.

Q. Did you make any inquiry to determine that?

A. No—why should I? I am talking about Hamill's exhibit, that is all I am talking about. If he knows something else about it, let him state his views.

Q. If you were going to correct the Hamill exhibit as to Baltimore, for comparison purposes wouldn't it be necessary to make similar corrections for New York?

A. I am not undertaking to correct the exhibit. I don't think much of the exhibit to begin with. All I am doing is showing—

Mr. Macleay: May I ask that the witness be admonished to confine his remarks to answers to questions.

Exam. Boat: He is stating what he is doing.

Mr. Macleay: I am not interested in what he thinks, Mr. Examiner, and I don't think that is a proper part of this record.

Exam. Boat: It won't be considered a part of the record.

By Mr. Macleay:

Q. In any event, you did not add any additional sailings for the port of New York, even though the vessels may have called at New York, is that correct?

A. I took the figures that Mr. Hamill shows in his exhibit. I did not go beyond that, insofar as New York goes.

I simply accepted what he shows sailings were, arrivals and departures for New York, and those are the figures we have put in exhibit A-1.

Q. Now, may I please have an answer to my question. I [fol. 1677] will repeat it for you.

Where the vessels which you have added to the Baltimore sailings also, on the same voyage, called at New York, you have not added it to the New York sailings?

A. I did not.

Q. That's correct, is it not?

A. No, it is not correct.

Q. You did add them to New York?

A. No, the way you phrase the question, I cannot answer you.

If you want me to answer and tell you that we did not examine the New York sailings and arrivals as shown in Mr. Hamill's exhibit, I will say yes—

By Mr. Macleay:

Q. That is not my question.

A. These are the vessels. I don't know whether they went to New York or not, and did not attempt to find out. All we did was look at these sailings and arrivals at Baltimore, of those ships that Mr. Hamill omitted, and stopped right there.

Mr. Macleay: May I ask counsel if he be willing that this late-filed exhibit that we are discussing include also a statement of the vessels omitted from the Hamill exhibit, that called at New York?

Mr. Moerman: The witness has already answered. He stopped at Baltimore.

Mr. Macleay: I know what the witness answered, but if I may just have an answer from counsel, that is all.

Mr. Moerman: My answer is that if in this late-filed [fol. 1678] exhibit you wish to show certain vessels arriving and departing from New York, I have no objection.

The Witness: We're not going to show that, are we?

Mr. Moerman: Mr. Macleay has undertaken that burden. We shall have that burden with respect to Baltimore.

By Mr. Macleay:

Q. Did you ask the Department of Commerce to give you any figures on bulk vessels, in bulk and in ballast, entering and clearing the port of New York?

A. No, sir.

Q. Are you familiar with the Calmar Line?

A. To a certain extent. I know they carry lumber.

Q. Is it an intercoastal line?

A. Yes.

Q. Are you familiar with the vessels operated by that line?

A. Not too much; I understand that the same vessels are used to carry different kinds of ores, and the same vessels generally carry general cargo westbound.

Q. They are in the coastwise service?

A. Well, they may go beyond that, for all I know. It's a big company, and it's owned by a steel company.

Q. It's owned by Bethlehem Steel Company?

A. That's correct; I believe so.

Q. Referring to page 3 of your Exhibit A-2, you list a vessel called the Alamar. Do you know whether that is a vessel of the Calmar Line?

A. I do not, sir.

[fol. 1679] Q. You list, also, the Penmar. Do you know whether that is a Calmar Line vessel?

A. Did you say on page 3?

Q. On page 4, I beg your pardon. The page is marked twice. In the center of the page it is marked page 3, and then under "Exhibit" it is marked page 4 of 21.

A. You are referring to page 4 of 21?

Q. Page 4 of 21, which is also indicated in the center of the top of the page as being page 3.

A. Your question refers to the Penmar?

Q. The Penmar and the Alamar, the Yorkmar.

A. What is that you want to know about them.

Q. I want to know whether you are aware of the fact that those are Calmar Line vessels, engaged in intercoastal trade?

A. I don't know whether they are Calmar vessels, but I might make this observation. Many times these intercoastal lines charter ships to foreign operators.

Q. Do you know whether the intercoastal lines occasionally stop at Cristobal to fuel?

A. I would not know, sir.

Q. You made no inquiry in that direction?

A. No, there was no occasion for me to do so.

Q. In your many years of connection with the shipping business, and with port operations at New York, you are not familiar with the operations of intercoastal lines?

[fol. 1680] Q. Can you explain why no entering date at Baltimore is shown for those vessels?

A. Yes, sir. That's because the Bureau of the Census did not have it on their cards. There are a few others, you will notice, where we show "none." There are several vessels where we show "none."

Q. I wondered if you had any explanation why there should be such a block of them, with no entrance date shown?

A. No, you will have to ask the Census Bureau. We don't know.

Mr. Macleay: I think that is a very good idea, and with the counsel's concurrence, I would like to arrange to have someone from Census who is familiar with these figures, available to explain them to us.

Mr. Moerman: I heartily concur.

Mr. Macleay: I wonder if I could ask Counsel to determine who, in Census, provided these figures to his client, to see if we could have somebody come over and explain them to us?

Mr. Moerman: A Dr. Ely, in the Bureau of the Census, Shipping Statistics.

Mr. Macleay: In view of the fact that you have been in contact with him in connection with these figures, would you undertake to ask him to cover over to explain them to us?

Mr. Moerman: I will try to get him to come over, and will let you know this afternoon what he says.

Mr. Macleay: Thank you.

[fol. 1681] Mr. Macleay: Mr. Examiner, in view of the at least tentative agreement regarding the late-filed exhibit, it may be possible for me to curtail my cross-examination

considerably. I wonder if we might have a short recess and let me look through my notes, to see how much of it I can eliminate. I think that we can then proceed a great deal faster.

Exam. Boat: We will recess for five minutes.

(Brief recess taken.)

Exam. Boat: Come to order, please.

By Mr. Macleay:

Q. Referring to your Exhibit A-3, Mr. Laux, did you make any investigation to determine when if ever any of the vessels listed there advertised, when on berth, for the transportation of general cargo?

A. No.

Q. Do you know of any instance in which any of the vessels listed there actually transported general cargo when not advertised on berth, and when not so listed in Maritime's records?

A. Specifically, as to the named vessels, I would have to say no, but—

Q. Thank you, sir.

Now, on your Exhibit A-4, I am little puzzled. On the cover sheet, in full caps, you indicate "These vessels are not operated to or from Baltimore."

Yet, on page 4, several vessels are indicated with asterisks and a reference to the note at the bottom of the [fol. 1682] page which says that these vessels are listed in Hamill exhibit as having called also at Baltimore.

Do you mean to indicate that in your opinion, they did not call at Baltimore?

A. Well, there was some doubt in our mind as to whether or not they did.

Q. Did you make any effort to check the records of the Department of Commerce, or ask the Department of Commerce to check the records and advise you whether or not those vessels had called at Baltimore?

A. No, sir.

Q. Are you familiar with the Grace Line vessels?

A. Yes, in a general way.

Q. Are you familiar with those of their vessels which are equipped to carry 52 passengers?

A. In a general way.

Q. Do you know what type of vessels those are?

A. You mean, what class?

Q. Yes. Are they C-1, C-2, C-3, or do you know?

A. No, I would not venture to guess. I think they are C-2's.

Q. Do you know that they are freight vessels, and built as freight vessels, which have merely had additional passenger quarters added to them, over and above the 12 passenger quarters usually available on a freight vessel?

A. You mean whether they have been remodeled?

[fol. 1683] Q. Do you know that they are fundamentally freight vessels?

A. No, I do not.

Q. When you tabulated in your Exhibit A-4, and eliminated in your Exhibit A-1, eliminated, from the New York sailings, the combination passenger-cargo vessels, did you make any similar deduction from the Baltimore sailings, of those which are indicated as having called at Baltimore?

A. I have not.

Q. Where did you obtain your information regarding the number of passengers which these vessels shown on your Exhibit A-4 are capable of transporting?

A. Some of it is from advertising material, and some from the steamship lines direct.

Q. Did you at the same time make any investigation or any inquiry of steamship lines, as to the cargo capacities of those vessels, either in dead-weight tons or bale cubic capacity?

A. Yes, we did, with some of them—not all of them.

Q. Can you tell me the bale cubic capacity of the Grace Line vessels indicated as having accommodations for only 52 passengers, the Santa Maria, Santa Cecilia, Santa Clara, Santa Luisa, Santa Monica and so forth?

A. Yes. The bale cubic capacity of those ships would range from, roughly, 300,000 to perhaps slightly over 500,000 cubic feet.

Q. Can you translate that into cubic tons?

[fol. 1684] A. That's a good-sized shipment. I just don't

know how to translate that at the moment. I would have to do some calculating, but our main position is, as I testified, these vessels do not have sufficient time to take completed loads.

Mr. Macleay: Mr. Examiner, will you please ask the witness to confine his answers to my questions.

His own counsel is perfectly competent to take him on redirect and bringing out anything further that they want to bring out. I just don't think that the record should be confused by getting into other matters at this point.

The Witness: All I am trying to do, Mr. Examiner is clarify what we have shown.

Mr. Macleay: I think what you have attempted to show is very clear, Mr. Witness.

The Witness: Very well.

By Mr. Macleay:

Q. You gave us the bale cubic for those vessels, did you not?

A. That's correct.

Q. Can you give us the dead-weight tonnage, what they can carry in dead-weight tons?

A. No, I do not have those figures.

Q. Do you know, generally, what it is?

A. No; it may be ten thousand tons, roughly speaking.

Q. That's a fairly good-sized freight vessel?

A. Yes, it is a good-sized freight vessel.

[fol. 1685] Q. Now, referring again to your Exhibit A-4, and the Argentine State Flag vessels indicated as having a passenger capacity of 116, the Rio Jachal, Rio Tunuyan, and the Rio de la Plata, can you tell me what is the dead-weight carrying capacity, and the bale cubic capacity of those vessels?

A. The Rio de la Plata, the bale capacity is 241,298.

Q. That's cubic feet?

A. Cubic feet.

Q. Would that translate to cubic tons at 40 cubic feet to the ton—is that the usual commercial figure?

A. Well, that is the basis on which steamship lines assess

their rates, but I am pretty sure that 40 cubic feet would not weigh 2240 pounds.

Q. It would depend on what it was, wouldn't it?

A. That is right. What was the other ship?

Q. The others in the same class.

Do you know whether the Rio Jachal and the Rio Tunuyan, both also listed in your exhibit A-4 as having a capacity of 116 passengers, are sister ships of the Rio de la Plata?

A. No, I did not know that, and I am not sure about the dead-weight cargo capacity of those ships. It is more than likely less than 10,000 tons.

Q. Well, would you say that it somewheres in the order of seven to 10,000 tons—in that area?

A. I would say around 7,000 and not 10,000.

[fol. 1686] Q. Do you know the cubic capacity of the Media?

A. Where is that shown here?

Exam. Boat: Two thirds of the way down, page 4 of that exhibit.

The Witness: I have it. I don't carry these capacities in my head.

By Mr. Macleay:

Q. May I see the list that you are referring to?

A. Well, it is made up a little differently.

Q. You have those figures on all of them?

A. No, not on all of them.

Mr. Macleay: Mr. Examiner, may we be off the record a moment?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

The Witness: According to the information that I have, the Media, has a bale cubic capacity of 368,908 cubic feet.

By Mr. Macleay:

Q. Mr. Laux, apparently you have with you a tabulation showing the bale cubic capacity of most, if not all, of the vessels indicated on your exhibit A-4.

In order to save time, I will ask you to read them all into the record.

A. Exhibit A-4, page 2, under "One Sailing." Arosa Sun, 357,271 bale cubic capacity, cubic feet.

Exam. Boat: These will all be in cubic feet?

[fol. 1687] The Witness: All in cubic feet; they are in bale cubic feet, which of course, is a measurement up to the battens of the ship. If these vessels carry grain, the capacity would be greater.

The next one is the Ascania, 400,000; Castel Felice, 28,592; Israel, 274,073; Ivernia, 251,470; John Van Oldenbarnevelt, 305,860; the Saxonia, 272,670; the Zuiderkruis, 493,453.

The Jerusalem, 179,950. The Groote Beer, 24,295. The Caronia, 27,415. The Saturnia, 69,799.

The Roma, 98,000; the Vulcania, 75,377; the Westerdam, 468,841.

The Berlin, 210,172; Britannic, 582,040; Conte Biancamano, 69,535; Flandre, 121,573; the Italia, 170,180; New York, 158,000; Queen Frederica, 70,090; Stavangerfjord, 201,045; The Stockholm, 241,000.

The Andrea Doria, 114,180; Constitution, 166,366; Cristoforo Colombo, 102,209; Ile de France, 301,588; Kungsholm, 123,000; Niuw Amsterdam, 91,272; Olympia, 499,000; the Ryndam, 124,027.

The America, 258,000; Maasdam, 125,200; the Mauretania, 375,689; Oslofjord, 106,275.

The Independence, 166,636; the Liberte, 91,280.

The Queen Elizabeth, 212,105.

The Ocean Monarch, 69,740; Queen Mary, 152,600; the United States, 148,000.

[fol. 1688] The Nassau, we have two figures on the Nassau. Lloyd's Registry shows 423,750, and it also shows 101,171, for the Cosmopolitan Shipping Company, and I am not too sure what that means. They may have changed the vessel, by modifying the interior.

According to Lloyd's records, it shows two figures.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

The Witness: Queen of Bermuda, 80,370; the Mohamid Ali El Kebir, 389,337; Rio Jachal, 240,298.

The Columbia, 161,378; Rio Tunuyan, 240,298; Santa Maria, 156,979; Santa Cecilia, 264,787.

The Covadonga, 350,721; Guadalupe, 51,386; Rio De La Plata, 241,298; Santa Clara, 525,599; Santa Luisa, 339,787; Santa Monica, 525,599; Santa Sofia, 525,599.

The Argentina, 587,000; Noordam, 461,373; Santa Barbara, 339,787; Santa Isabel, 364,787; Santa Margarita, 339,787.

The Media, 316,908; Parthia 360,070; Ancon, 365,292; Cristobal, 220,151.

The Santa Paula, 251,392; Santa Rosa, 251,393.

Mr. Macleay: Thank you.

By Mr. Macleay:

Q. In your Exhibit A-5, where did you get Dead Weight Tons and Measurement Tons figures shown on the first page?

[fol. 1689] A. A combination of two places, U. S. Customs in New York, and from the steamship people.

Q. You mean you called the steamship people and asked them how much tonnage they had on a vessel on a certain sailing?

A. On that sailing, yes, sir.

Q. Those are the sailings which carried the freight which you have listed in the following pages?

A. Supposedly, yes.

Q. You said you got it primarily through inquiry to the shipping companies?

A. And the U. S. Customs.

Q. Why couldn't you get it all from the U. S. Customs?

A. Well, I tell you, we could have gotten it all there, but we would have had to bring down adding machines and a few other things. It is very complicated, the way it shows in their manifests, and our boys took off quite a bit of it, and then we checked with the steamship lines and the figures came out accurately, so we saved the trouble by going direct to the steamship lines. At first we sort of assumed that

the steamship lines would be unwilling to give us that information, but they finally agreed to give it to us.

Q. Well now, I ask you if those are alternative methods of measuring it—in other words, one is the dead weight tons, and the other is the measurement tons. Are those supposed to conform or does that show the amount of [fol. 1690] freight that was measured in dead weight tons, and then the amount of freight, on the same voyage, that was in measurement tons?

A. The deadweight tons and the measurement tons are two different items of freight.

Q. It's the latter, then, in other words, the dead weight tons means a certain amount of freight which was measured in deadweight tons, on that voyage, and the measurement tons means that on that same voyage there was other freight that was measured in measurement tons?

A. That is correct.

Q. So, in order to properly evaluate the freight on each of those voyages, you must put together the dead weight tons and the measurement tons?

A. That is correct.

Q. So that for example, on the Media, on the voyage indicated under date of 2/23/58, carried the consist which you have listed on pages six, seven and eight of that exhibit; she carried 3692 tons of freight which was rated for rate charges on dead weight tons, and she carried 5,487 measurement tons of freight in addition?

A. That is correct.

The measurement tons are rated on the basis of 40 cubic feet to a ton.

Q. To a gross ton—to a ton of 2240 pounds?

A. Yes, but for instance on this 5,487 measurement tons, [fol. 1691] if we convert that into dead weight on the basis of 2240, you would probably have a hundred or more cubic feet to the ton. In other words, it's the bulky commodities.

Q. That's right, it's the type of freight on which the steamship line assessed on a cubic basis rather than on a weight tonnage basis?

A. That's correct.

Q. Now, where did you obtain the basic figures for your Exhibit A-6, Mr. Laux?

A. Through another study which we requested be made by the Bureau of the Census, and we have the data here in the room, if you want to look at it.

Q. I would like to.

I would like to see how that was made up. Can you give us column headings on these? Here's one with column headings on it.

Just so that we may understand this, Mr. Laux, I have before me a tabulation which is headed "Alphabetical Listing of Vessels Engaged in Foreign Trade Cleared or Granted Permit to Proceed at the Ports of New York (10-01) and Baltimore, (13-03) January-December, 1956."

Is that the document that you have used?

A. Yes.

Q. In what form did this document reach you? Did it have these pencilled and pen-and-ink notations on it when [fol. 1692] transmitted to you by the Bureau of Customs?

A. No.

Q. In other words, the Bureau of Customs merely gave you a listing of all vessels?

A. So I understand.

Q. Vessels which cleared the ports of New York and Baltimore during that two-month period?

A. Yes.

Q. Then you made the exclusions?

A. Yes. Our force went over it, and we came up with this Exhibit, and we show here what we omitted.

Q. I understand what you show, at least I hope to by the time we get through this exhibit.

Now, you state in the notes to Exhibit A-6 that you eliminated all passenger ships which cleared New York. Did you also eliminate combination passenger and freight ships?

A. Oh yes.

When you talk about combination passenger freight ships, we have in mind those carrying more than 12 passengers.

Q. In other words, you eliminated any vessel which carries more than 12 passengers?

A. That is right.

Q. Did you similarly eliminate such vessels clearing Baltimore?

A. I could not say; I don't know. Maybe Mr. Gilbert might know.

[fol. 1693] Mr. Gilbert: The answer is "No."

The Witness: We did not.

By Mr. Macleay:

Q. Now, referring again to this rather formidable underlying data which has been placed before me, I note an indication in green pencil, which says: "Under one thousand tons."

Does that mean that the vessel sailings that are checked with green are those of less than 1,000 tons carrying capacity?

A. I believe so.

Q. And the figure of 248 appears also in green. Does that mean that there were 248 such sailings indicated?

A. I could not say, offhand. I would have to ask Mr. Gilbert, again.

He says "Yes."

Q. How many of those were sailings from New York, as compared to sailings from Baltimore?

A. I would not know, offhand.

Q. Would Mr. Gilbert know that?

Mr. Gilbert: There are two parts to that study, one of which covers the port of New York and the other covering the port of Baltimore.

Mr. Macleay: I see. This one carries, in green ink, the notation, "New York Section." Does that mean that this has to do with the port of New York, only?

Mr. Gilbert: Yes, sir. Then there is a part which refers [fol. 1694] to Baltimore.

By Mr. Macleay:

Q. Mr. Laux, I note, also, on this material that is marked "New York Section," a notation in red pencil, "1,000-1,500 tons."

Does that mean that the red pencil checks at each of these indicated movements, where it appears, the vessels involved was between 1,000 and 1,500 tons?

A. I will have to call on Mr. Gilbert.

Mr. Macleay: My question is, are the sailings indicated in red those of vessels between 1,000 and 1,500 tons?

Mr. Gilbert: Yes, that is right.

Mr. Macleay: While those indicated in green are of less than 1,000 tons carrying capacity?

Mr. Gilbert: That is right.

By Mr. Macleay:

Q. And during the period January to December 1956, you eliminated from the New York tabulation 248 sailings of vessels of less than 1,000 tons carrying capacity, and 595 vessels of 1,000 to 1,500 tons carrying capacity, is that correct?

Mr. Gilbert: Yes. All the fishing vessels, as a group, are excluded.

Mr. Macleay: Will you indicate to me which of these vessels are fishing vessels?

Mr. Gilbert: I would say that they would be in excess of 80 percent.

[fols. 1695-1742] Mr. Macleay: Did you check them?

Mr. Gilbert: To the extent of 80 percent, yes, sir.

Mr. Macleay: Can you indicate to me, on this exhibit—Mr. Examiner, I wonder if we might have Mr. Laux step down temporarily, and let Mr. Gilbert take the stand?

He seems to be the one that knows about the exhibits.

Exam. Boat: Mr. Gilbert has been sworn.

Mr. Macleay: I though perhaps he should move up here a little closer, where we can better examine on these matters.

Exam. Boat: Off the record.

(Discussion off the record.)

[fol. 1743] Exam. Boat: Proceed.

Mr. Macleay: May the record show, Mr. Examiner, that Dr. Gilbert has been asked to come up here and answer some questions.

Exam. Boat: He has been sworn previously.

Mr. Macleay: I would like to ask a question, though, Mr. Examiner.

Exam. Boat: Yes.

Mr. Macleay: Did you participate personally in the preparation of this data the results of which are shown on Exhibit A-6 of Mr. Laux?

Mr. Gilbert: I did.

Mr. Macleay: Were you in charge of the preparation of that material?

Mr. Gilbert: I was in charge of it.

Mr. Macleay: Now, referring to these documents which have been handed us here as the underlying data, I notice that what appears to be the New York section is in two parts.

Is that correct?

Mr. Gilbert: Yes.

Mr. Macleay: In other words, both of these sections are New York?

Mr. Gilbert: Yes.

Mr. Macleay: And for the period January to December '1956?

Mr. Gilbert: Yes.

[fol. 1744] Mr. Macleay: And one section is marked "Baltimore, 1956."

Mr. Gilbert: This is '57.

I would like to explain. When we had people working on it, we had two men pulling off the data, so there were these basic runs, which are IBM runs. We had them torn up so that two men could work on the same thing. One would start at the back and one work towards the center.

I would not want to answer the question definitely unless I could match the code numbers up to find out.

Mr. Macleay: Would you please match the code numbers and tell me.

Mr. Gilbert: This belongs here. This is one deck. This is not two decks.

Mr. Macleay: In other words, although physically in two pieces, it is one deck and it is the deck for the Port of New York January to December 1956, is that right?

Mr. Gilbert: That is right.

Mr. Macleay: Now, in these colored pencil notations, one of these sub-decks, you might say, indicates ships under

1,000 tons, 112. The other one says ships under 1,000 tons, 248.

Mr. Gilbert: That is correct.

Mr. Macleay: Must those two figures be added together in order to determine the total number of ships under 1,000 tons clearing the Port of New York during that period?

Mr. Gilbert: Yes.

[fol. 1745] Mr. Macleay: Similarly, in red, there is indicated on one deck ships over 1,000, under 1500. I assume that means tons?

Mr. Gilbert: Oh, yes.

Mr. Macleay: Carrying capacity?

Mr. Gilbert: That's right.

Mr. Macleay: And on one deck it says 137, on the other it says 595. I assume those figures must be added together in order to determine the number of vessels of between 1,000 and 1500 tons carrying capacity which were eliminated from the sailings from the Port of New York?

Mr. Gilbert: That is correct. The same computations were done for Baltimore, of course.

Mr. Macleay: That's right. We'll get into that.

Mr. Gilbert: Good.

Mr. Macleay: Now, will you please look at the deck, as you term it, which has written thereon "Baltimore Section, 1956" and tell me how many vessels in each of those categories were eliminated from the Baltimore sailings?

Mr. Gilbert: I cannot from this deck. We had two people working on it, and the notations, or the coding which we used, are quite specific in the case of New York. It was not here. I can give you the figures. We will have to go back and pull them.

Mr. Macleay: In other words, there is no way we can look at this underlying data and determine—

[fol. 1746] Mr. Gilbert: Counsel, you can see we had developed the practice as we went through. You can see we have the exact notation for this.

Mr. Macleay: You say "for this." The record doesn't show what it is you are talking about.

Mr. Gilbert: This is the 51 deck for the Port of New York. And the uniformity which is applied in the heading, you won't be able to find it on the actual deck.

Mr. Macleay: Well, there is a notation on this deck entitled Baltimore Section, 1956, written in ordinary lead pencil, which says, "Red equals under 1,000 net tons and blue equals between 1,000 and 1500 net tons."

Is that correct?

Mr. Gilbert: Yes, sir.

Mr. Macleay: Now, how many such checks are there in either red or blue on this document?

Mr. Gilbert: We would actually have to count it. The man who had done that had done it on a scrap of paper. The man who had worked on the other had written it on the top. The same methodology was used for both. You see, the coding is there.

Mr. Macleay: Now, as I glance through it, I don't find very many marked in red or blue. It doesn't look as though it would be too onerous a task. I wonder if I could impose upon you, Dr. Gilbert, to make such a count for me during [fol. 1747] the luncheon recess.

Mr. Gilbert: All right.

Mr. Macleay: Those in red and those in blue.

Mr. Gilbert: I would take your count also.

Mr. Macleay: Well, all right. We will make the count.

Now, what is the significance of the green checks as shown on this Baltimore section?

Mr. Gilbert: This is the problem I was explaining before. If you will notice—I am trying to explain something in a logical manner, and, obviously, in the evolution of it it was not particular logical. This, too, the green checks will be here, under the 1500 tons you found, Counsel.

Mr. Macleay: Well, that is a green check on another deck.

Mr. Gilbert: This is for '31. It is the same procedure used.

Mr. Macleay: That is for the New York section.

Mr. Gilbert: I am afraid you are reading greater import into the coloring. This was to help us as we developed—we had two men who were basically not skilled in this field and we tried to help them along as they went through it. We had the problem of working and teaching them the thing.

Mr. Macleay: Are you trying to say that where you have indicated on this Baltimore section for 1956 that red equals

under 1,000 net tons and blue equals between 1,000 and 1500 net tons, that that is not correct, the green also indi-
[fol. 1748] cates something in that field?

Mr. Gilbert: It depends which deck you are looking at. Here is a deck—

Mr. Macleay: Well, I am looking at the deck from which I just read that indication.

Mr. Gilbert: I would have to check each of the decks to verify what that man had used there. I have the notes back in the office, if I want to take the time to look for it. As I indicated, there were two men working.

Mr. Macleay: Yes. But isn't your note that you have written on this deck an accurate description of what was done with this particular deck on which it is written?

Mr. Gilbert: The note on the top is my notation. I had unskilled men. And if you will notice the checks in some cases happened to be green, so that you can see the problem of educating the man while he is doing it is a very difficult thing to do.

Mr. Macleay: Now, I notice also the first check on the deck is green, but immediately alongside it is a check that is blue.

Mr. Gilbert: You notice that—

Mr. Macleay: And your blue says that it is between 1,000 and 1500 net tons? Is that correct?

Mr. Gilbert: I think you will also notice that there is a different pencil mark with somebody else's manipulation.
[fol. 1749] Mr. Macleay: That is right. So it looks to me that someone had come through and made a check of it.

Mr. Gilbert: It is my check.

Mr. Macleay: Then when we get on down the line, we find some which are checked close to the figures in green and others checked farther back in red and blue, and one of those checked in green is also checked in blue.

Is that correct?

Exam. Boat: Well, now, off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Macleay: It has been agreed in the off-the-record discussion that I will try to arrange with counsel for some

expedited method of obtaining the figures showing the exclusions in the Port of Baltimore from this underlying data, there being no such totalling thereof on the Baltimore section as appears on the New York section.

Mr. Gilbert: If this was an exhibit, we would have done it for you.

Mr. Macleay: It is the underlying basis for an exhibit.

Mr. Gilbert: All right.

Cross examination (continued).

By Mr. Macleay:

Q. Mr. Laux, may I inquire whether I should direct inquiries with reference to Exhibit A-7 to you or to Dr. Gilbert?

[fol. 1750] A. I think I am the witness on A-7.

Q. Did you make any comparison of the first in and last out sailings so far as the North Atlantic ports are concerned as respects the sailings which you checked in order to develop this material?

A. No, we have not. This material was—

Exam. Boat: Just what do you mean by "first in and last out"?

Mr. Macleay: Whether the vessel went first to Baltimore or first to New York, sailed last from Baltimore, or last from New York, or last from Philadelphia, Hampton Roads, whatever it may be.

Exam. Boat: The first port in and the last port out?

Mr. Macleay: Yes.

By Mr. Macleay:

Q. Can you advise us, Mr. Laux, what percentage of the sailings from the Port of New York are direct to foreign ports?

A. No, I can't.

Q. As compared with those which are indirect, in other words, have another stop at a domestic port before sailing foreign?

A. No, sir.

Q. Are you familiar with a publication entitled, "Via Port of New York," published by the Port of New York Authority?

A. Yes, sir.

Q. Is that the same Port of New York Authority by [fol. 1751] which you are employed?

A. The same one that pays my check.

Q. Referring to a copy of the June 1958 issue of that publication, the inside cover, I find the following statement.

Mr. Moerman: Mr. Macleay, I should like to interrupt here. I don't see that that is leading into a cross-examination of the direct testimony. There is a great deal of material I would like to get in, too.

That document is rather recent, isn't it, Mr. Macleay?

Mr. Macleay: Oh, it is very recent. It is June 1958. It was right hot off the press.

Mr. Moerman: Believe me, there are two years of information which we would like to get into this record having a bearing on this case, and I should like to get the case submitted for a decision. But if we are going to go on interminably with recent data, I guess it is going to prejudice us.

For that reason, Mr. Examiner, because first, the data with respect to direct sailings is not, I submit, a proper cross-examination of this witness so far as his testimony is concerned, and second, because the data is outside the scope of the material in this record, I object to the question, which really hasn't been put.

I apologize, Don, but I knew what was coming.

Mr. Macleay: Well, rather than take up a lot more time in discussion of it, and I know how much time discussions [fol. 1752] with Mr. Moerman can take, I will drop the question.

By Mr. Macleay:

Q. Returning for a moment to your Exhibit A-6, Mr. Laux, did you make the determination of which vessels should be eliminated from the coded tabulations provided you by the Department of Commerce?

A. In a general way, yes.

Q. Now, what do you mean in a general way?

A. Well, we discussed what would be considered important.

Q. Who is "we", Mr. Laux?

A. We'll, Mr. Gilbert and myself, Mr. Moerman, Mr. Myskowski. It cost us a lot of money to get this together. And we decided that the small vessels are not of importance when it comes to foreign trade.

Q. Did you make any inquiry to determine what vessels are eliminated from the usual Maritime Administration tabulations of vessel sailings in foreign commerce?

A. Oh, I have a recollection that they eliminate or refer to 1500 tons in all.

Q. Did you know that they eliminate only vessels of less than 1,000 tons carrying capacity?

A. Well, that is no indication that the—

Q. I am just asking you if you don't know that.

A. It is ridiculous to talk. We are talking here about ocean-going vessels and vessels that will get general cargo.

Q. Just a moment, Mr. Laux, please. I don't want to [fol. 1753] argue the merits or demerits of what you have done. I am merely trying to get the facts in the record.

Don't you know that the Maritime Administration eliminates vessels of less than 1,000 gross ton?

A. No.

Q. Do you know whether vessels of less than 1,000 gross tons were eliminated from the figures provided you by the Department of Commerce upon which you and your staff predicated your Exhibit A-2?

A. Page 2 of my Exhibit A-2 shows, under paragraph 3, "Small ships of less—

Q. No, Mr. Laux, you are looking at your A-6, I believe.

A. I mean A-6.

Q. I just posed a question about A-2, and I will ask the reporter please to read it back, Mr. Examiner, if you will permit me.

Exam. Boat: Will you read the question, please.

(Question read.)

Mr. Macleay: The question was, "Do you know that," and so forth.

Mr. Moerman: Mr. Examiner, on the grounds of clarification, I would like to point out that Mr. Macleay's question to the witness was with respect to the practice of the Maritime Administration, while the figures to which he directs the witness's attention, shown on A-2, are Department [fol. 1754] of Commerce Census Bureau figures.

Mr. Macleay: I don't like to correct Counsel, but he is speaking of the question previous to that, which was directed to Maritime Administration practice, and the witness stated he didn't know. I then posed him another question, did he know that vessels of 1,000 gross tons were eliminated from the basic data on which he predicated his Exhibit A-2, an entirely different question, based upon his answer that he did not know what was the custom of Maritime.

Mr. Moerman: Yes. Now, this data, of course, is not Maritime data.

Mr. Macleay: I am quite aware of that. The record is perfectly clear on it.

Mr. Moerman: It wasn't clear to me.

The Witness: It is not clear to me, either.

Mr. Moerman: Try again, Mr. Macleay.

By Mr. Macleay:

Q. Is the question clear to you now?

A. No, sir.

Q. Do you know what exclusions were made from your Exhibit A-2 so far as size of vessels is concerned?

A. I don't know, sir.

Q. Can you point to any vessel in Exhibit A-2 which has less than 1,000 tons carrying capacity?

A. Frankly, I don't believe there is any of those small vessels in my Exhibit A-2 because we were looking for large ships.

[fol. 1755] Q. Now, do you know—well, now, you say you were looking for larger ships. I thought you said you had the Department of Commerce prepare this, the basic material.

A. Of course, that's true.

Q. Did you have the Department of Commerce make any exclusions from that material?

A. No. You'll have to ask Mr. Gilbert.

Mr. Gilbert: The universe that we have is all the vessels that moved into Baltimore and into New York are in the runs that are the basis of A-2. In other words, there was no adjustment. Basic data—if I may, Mr. Examiner—the basic data that the Maritime gets starts with the Bureau of Census. What you have is at every port vessels arrive and clear, whether they be 50 tons, or not. Now, they take the data and send that on to the Bureau of Census, Department of Commerce, and they run the tabulations. There are no judgment values. Then the Corps of Engineers, which is at issue in this case, their data, as well as the Maritime, take this basic data and proceed to set up their own criteria in terms of their own individual needs.

What you have here are all the vessels that have touched foreign ports.

Mr. Macleay: Now, you say "what we have here" and you are pointing your finger on census figures.

Mr. Gilbert: That's right.

[fol. 1756] Mr. Macleay: Which were used for development of A-6?

Mr. Gilbert: That's right.

Mr. Macleay: I will ask, is the same thing true of the material used to develop Exhibit A-2?

Mr. Gilbert: The answer is "Yes."

Mr. Macleay: In other words, Exhibit A-2 includes the vessels of less than 1,000 gross tons?

Mr. Gilbert: It includes all vessels, that is correct.

Mr. Macleay: Will you please take Exhibit A-2 and indicate to me which vessels thereon are of less than 1,000 gross tons?

Mr. Gilbert: The one that he is referring to is the one that—

Mr. Macleay: What do you mean the one I am referring to? I am referring to Exhibit A-2.

Mr. Gilbert: A-2, that is correct. A-2 is a study for six months, and, if the Examiner recalls that particular data, those runs we said were in New York. The ones comparing '51 to 1956 are sitting on your desk, Mr. Examiner. I cannot answer the question.

Mr. Macleay: I don't know which of these witnesses I should direct this question to, Mr. Examiner, but I proffer a copy of Lloyd's Register for 1956 and '57, which contains these matters as a very ready reference, and ask him to point to me one vessel on Exhibit A-2 which is of less than 1,000 tons carrying capacity.

[fol. 1757] Mr. Gilbert: Mr. Examiner, the basic data that he had asked for we said was in New York. When we bring the basic data down which has been requested and has been promised by counsel, he will find that, on the basic runs that are set up like this, the information will be printed on there and we can answer it. There is no need for this sort of procedure when the answer is quite simple and has been promised.

Mr. Macleay: Mr. Examiner, I submit that if I am not to have an answer until tomorrow, that we should suspend with this witness until tomorrow, or these witnesses, rather.

Mr. Moerman: What is the objection, Mr. Macleay, to waiting until the data which you asked for and which I promised arrives?

Mr. Macleay: I haven't the slightest objection. I am merely suggesting that we suspend with these witnesses until it arrives.

Mr. Moerman: Well, couldn't you go on to something else?

Mr. Macleay: No, I cannot go on to something else.

Mr. Moerman: Well, there are more exhibits. Did you just want to stop? I mean, can't you cover some of the other points?

Might I ask, is this the sole question that you have to ask of Witness Laux?

Mr. Macleay: I haven't the slightest idea, because I have no way of knowing what questions that may lead me into, [fol. 1758] Counsel.

Mr. Moerman: Might I ask this: Is this the sole subject which you wish to cover, the question of 1,000-ton vessels?

Mr. Macleay: No, not 1,000-ton vessels particularly, but this general subject of size of vessels.

Mr. Moerman: Well, all right, if that is the only subject you have left for cross examination—

Mr. Macleay: Just a moment, Counsel. I didn't say it was the only one. It is the principal important one other than matters which we have agreed to work on off the record and see if we can't figure a way of doing it.

Mr. Moerman: All right, sir. Just in the intefest of saving time, I will be willing to suspend. I would prefer to go on if there are other subjects, but if this is the principal subject and what else remains is what we have to try to work out together, certainly there is no objection to suspending.

Mr. Macleay: Well, then, Mr. Examiner, may it be understood that I will suspend my cross examination of Mr. Laux until he and Dr. Gilbert have had an opportunity to obtain the balance of their underlying data and have had an opportunity to review this underlying data which does not have totals shown on it, and then we will proceed from there?

Exam. Boat: That seems to be the desire.

Mr. Macleay: I think it would be a time-saving device, because I am going to waste time covering these points [fol. 1759] without the material here.

Mr. Hanifin: I have some questions of Mr. Laux, if I may.

Cross examination (continued).

By Mr. Hanifin:

Q. Mr. Laux, I would like to direct your attention to Sheet 4 of your rebuttal verified statement. On that sheet you use some terms which I would like to ask you to define.

The first one is "dockage." Would you please define "dockage" insofar as you used it?

A. Yes. Dockage is the charge ordinarily imposed by a terminal operator for a vessel to tie against a pier or a wharf.

Q. Now, is there any charge for dockage in New York?

A. At some of the piers there is a charge, but most piers are leased to steamship lines on a yearly basis. For example, at the Port Authority wharves in the Port of New York we have dockage charges.

Q. You say "we" have dockage charges?

A. The Port of New York Authority has dockage charges.

Q. Now, are they at piers which are leased to steamship lines?

A. No. The piers that are leased to steamship lines, you would not have a docking charge. You only have a docking charge where it is a public pier and the vessel comes in and uses that pier.

Q. Now, how about the situation at Philadelphia? Is [fol. 1760] there any dockage charges at Philadelphia?

A. There may be some. I think at Philadelphia Piers, Inc., that is a terminal operator, I am sure he charges dockage?

Q. How about Baltimore?

A. Well, Baltimore, generally speaking, the piers are controlled or owned by the railroads and the railroads give those piers to the steamship lines to use at no charge.

Q. You say the railroads make no charge for a ship coming alongside to receive freight at their piers at Baltimore. What is the situation in New York? Do the railroads make any charge for a ship coming alongside their piers to receive freight?

A. Well, at New York the railroads don't have any piers that are comparable to regular cargo piers. They have a few piers that they use for loading certain types of ores, scrap, but they are not important, they are not like the piers that you have in Hampton Roads or in Baltimore.

Q. Well, do I understand your testimony that there is no general merchandise traffic moves over railroad piers in New York?

A. That is putting it correct. In other words, the piers of the railroads on the Jersey side of the river, you can't very well get trucks in and out of those piers.

Q. Then all the traffic you are referring to, then, of import and export variety moves over the steamship piers [fol. 1761] and has to either be lightered or trucked? Is that correct?

A. That is correct, in New York.

Q. Now, on Sheet 4, you referred to a 30 cents per ton on cargo, which is about the average cost for the use of the wharf.

Is that a cost for this term "wharfage" you have previously used?

A. That is correct.

Q. Now, what do you mean by "wharfage"?

A. Well, wharfage means the use of a deck of a pier for holding the freight for delivery, that is, freight that is discharged from a vessel, or holding the freight that is to be loaded to a vessel. And in the 30 cents is the cost which would involve, perhaps, checkers and—

Q. The cost of operating the pier?

A. Well, not entirely. It is more or less the clerical work and watching staffs. In other words, it is the clerical work and protection to the cargo before it is put aboard ship or taken off the ship.

Q. How did you arrive at a figure of 30 cents per ton?

A. Well, we got to that figure through studies we have made being in the business of constructing and renting and leasing piers in New York.

Q. Studies that the Port of New York Authority made?

A. Yes, sir.

[fol. 1762] Q. Were these studies made of your own piers?

A. Our piers and some of the piers operated by other steamship people.

Q. Now, you referred to storage. What do you have in mind there? That seems to me pretty much what you referred to as wharfage.

A. No. Storage is a different item again. Storage applies or is imposed after the free time expires. For instance, in this 30-cent cost would be whatever expense may be involved in allowing the freight to remain on the pier five days free before exportation.

Q. Now, just a second, if I may interrupt you.

What piers are we talking about now?

A. These piers that are offered to the steamship lines without cost by railroads.

Mr. Hanifin: Read the answer, please.

(Answer read.)

By Mr. Hanifin:

Q. I am sorry, sir. That doesn't clear up the situation for me.

Are you talking about leased piers of the steamship line, or are you talking about railroad piers?

A. Railroad piers.

Q. I thought you just told me a minute ago that the railroad piers were of no significant use in New York.

A. In New York, yes. Well, here I am referring to the [fol. 1763] piers and wharves in Baltimore and Hampton Roads.

Q. Well, you indicate, sir, that there is some cost at New York for affording storage.

A. That's right.

Q. Now, let's take first the situation on the railroad piers. Do not the railroads on the piers in New York have storage charges published in their tariff?

A. Well, now, wait a minute. What kind of piers are we talking about, Mr. Hanifin?

Q. We are talking about the railroad piers. That is what you said you were talking about.

A. I am talking about railroad piers at other ports, not New York.

Q. Well, Mr. Laux, will you answer my question: With respect to storage in New York on railroad piers, is that not covered by a railroad tariff publication?

A. Well, I am sorry I can't give you an answer that I am sure would be correct, because the railroads do have storage charges on export shipments that they hold at their terminal, but at those terminals the steamship line doesn't dock. You see now, if we are talking about the railroads that have piers and let the steamship lines use them and where they berth a ship or dock a ship, that is a different problem.

Q. Now, Mr. Laux, with respect to these storage charges, are not the same tariffs applicable to the railroad piers at [fol. 1764] Hampton Roads as are applicable to the railroad piers at New York with respect to storage charges?

A. Yes, somewhat similar. They are not exactly the same.

Q. So when you say that there is free storage at Hampton Roads, you are inaccurate in that statement, are you not?

A. Did I say free storage? I say dockage, wharfage, storage and clerking.

Q. Yes.

A. Well, yes, you do get free storage because you allow the steamship line on import freight five days to have the freight removed.

Q. All right, sir. Now, what is allowed at New York?

A. At New York, the steamship line brings in the freight at its own pier.

Q. And after it gets on the railroad pier, how much free time is allowed?

A. There is no question of free time that would come into that picture because the railroad picks up the freight by lighter at the steamship pier. So there would be no occasion to give it any free time.

Q. You mean that free time is not published in the Port of New York on the railroad piers?

A. It is, but, like I said before, those piers are not used and they are not of any importance in the import-export business. They only have a very limited number of piers, [fol. 1765] maybe about two or three.

Q. Mr. Laux, are you trying to tell the Commission that there is no such thing as storage charges in New York?

I think we are quibbling, frankly, but I would like to get this thing straight.

A. I'll get it straight for you if you will let me.

On import freight, the freight is discharged to a pier that is leased and controlled by the steamship line. That steamship line allows anywhere from five to six days for the consignee to remove the freight from the steamship pier. Now, the railroads do not receive import freight direct from the steamer at their piers. Therefore you don't have the question of free time allowances on import freight by rail.

Q. You mean if the cargo is brought from the steamship pier over to the railroad pier it is subsequently moved out by rail, there is no question of free time storage on import traffic?

A. That's right.

Now, on the export traffic, the situation is this. The railroad brings the freight down to the New York terminal on the Jersey side of the river or the New York side and allows the consignee or exporter seven days free time. Within that seven days free time the exporter orders the railroad to make delivery by lighter to the steamship pier.

Q. All right, sir. Now, what happens at Hampton Roads [fol. 1766] on the same thing?

At Hampton Roads, the railroad, Norfolk and Western, for example, will take the car to Newport News, they provide in their tariffs that they allow five days free time for freight imported that is landed on the piers.

Q. You were just talking about export. Let's keep on the same subject.

A. Export they provide seven days.

Q. It is precisely the same situation that obtains in New York, isn't it?

A. No, it isn't, because at Hampton Roads you are offering the pier to the steamship line.

Q. We are doing what?

A. Offering the pier to the steamship line.

Q. Mr. Laux, we are talking now about export traffic, and free time at the railroad pier. You just testified, I believe, that the railroads accord at New York seven days free time under their tariffs, and I am asking you if you don't know that exactly the same practice obtains in Hampton Roads?

A. It is not the same, because at New York we do not have a railroad owned and controlled pier, whereas at Norfolk and Hampton Roads we do. In other words, the freight is assembled there for account of the steamship line.

Q. It is assembled where?

A. At the railroad pier.

[fol. 1767] Q. Isn't it assembled at the railroad pier at New York for the account of the steamship line?

A. No. It is assembled in New York for the account of the exporter under the railroad's orders to make delivery.

Q. Now, Mr. Laux, with reference to storage, do the railroads receive any remuneration for affording any storage at New York beyond the seven days free time?

A. Yes. They have provisos under which charges are assessed for periods of ten days, I think.

Q. Of what, of ten days?

A. Of ten days, yes.

Q. And, with respect to Hampton Roads, isn't it the same situation?

A. I don't know whether it is exactly the same, pretty close to it.

Q. You testified about Hampton Roads.

A. Well, I haven't checked the tariff to see what the rates were. Now, the rates may vary somewhat because Hampton Roads is adjacent to Southern Territory.

Q. Now, let me ask you with respect to clerking, what free clerking services is afforded at Hampton Roads?

A. Well, for example, a vessel at Hampton Roads would discharge wood pulp. The railroad will allow 15 days within which that pulp is removed. Now, if part of the pulp moves out by truck, the railroad does the clerking [fol. 1768] and checking and acts as custodian for the steamship line.

Q. On what facility is that situation occurring today.

A. Pier N.

Q. Pier N. Is that a Norfolk and Western pier?

A. I think so.

Q. Do you know any other commodity other than wood pulp where free clerking services are afforded?

A. Sure. Newsprint.

Q. Newsprint?

A. Yes.

Q. Where did you get your information with respect to this, Mr. Laux?

A. Why, I got it from some of the importers.

Q. Well, would you mind identifying them?

A. Well, I don't remember the firms offhand, but that's part of our business.

Q. How long ago did you get them?

A. Oh, not very long ago, maybe six months or eight months.

Q. You remember the information but you can't remember their names?

A. We picked up a lot of information when the railroads came through with Ex Parte 212 to impose some extra charges and hike some other charges.

Q. Now, Mr. Laux, let's go back over again this business of free dockage. As I understand, you are referring [fol. 1769] there to the steamship coming into the railroad pier, there is no charge made by the railroad for the steamship taking on or discharging cargo? Is that right?

A. That is right.

Q. With respect to storage, I believe you agreed with me that there is seven days free time on export storage at Hampton Roads and beyond that there is a charge made?

A. That is export.

Q. On export.

On import, it is five days, correct?

A. Well, no. On import you have 15 days on wood pulp.

Q. On what other commodity besides wood pulp do you have 15 days?

A. I don't know. There may not be others, but I remember wood pulp.

Q. As a general proposition, it is five days, isn't it?

A. Five days for what, import?

Q. On other commodities.

A. Yes, other commodities.

Q. On other commodities it is five days, and beyond the five days there is this charge made for storage?

A. That is correct.

Q. Now, as far as clerking is concerned, the only instance you can cite to me is the situation on the Norfolk and Western pier and in connection with wood pulp? Is that right?

[fol. 1770] A. Oh, no. You have the clerking on other commodities as well, at Newport News as well as Norfolk.

Q. Well, just tell me what those commodities are.

A. I just named some of them. Sugar, coffee, newsprint, wood pulp.

Q. When did you get this information?

A. Tobacco.

Q. When did you get this information, Mr. Laux?

A. Off and on over a period of months and years.

Q. And you believe it to be accurate?

A. Absolutely.

Q. That free clerking is afforded to steamship lines on piers?

A. Yes. In other words, your checker checks the freight to the truck, or the consignee's truck.

Q. We check the freight to the consignee's truck?

A. Yes. In other words, you give the steamship line a receipt for the total cargo dropped into a pier and then you clerk it out to the consignees.

Q. All right, sir. Now, what happens at a railroad pier in New York that is different from that situation at Hampton Roads?

A. Well, a railroad pier doesn't have the steamship freight on it.

Q. Do you mean that they don't make a receipt to the receiver or shipper of cargo moving over their piers for [fol. 1771] either exportation or importation to leased steamship line piers?

A. I again have to go back to the difference between New York and Hampton Roads, because on export freight, like I said before, the railroad delivers it to the steamship line, and on import freight, it is delivered by the steamship line to the railroad. Now, they don't handle this commodity by truck or otherwise like they do down at Hampton Roads where they get a receipt from the truckman or the consignee.

Q. In other words, your entire statement or testimony with respect to this is predicated on what you concede to be the difference between practices at New York and Hampton Roads in that at New York the traffic either moves to or from a railroad pier and thence to some further destination in New York Harbor, where it is either imported or exported?

A. Well, steamship lines receive and deliver the cargo.

Q. Where the steamship line receives and delivers the cargo, and at Hampton Roads, the situation is that the ships come directly to the railroad piers?

A. That is right.

Q. But insofar as you know, the wharfage and the storage charges which are published in the carrier's tariff with

respect to the North Atlantic ports, the charges are the same, are they not, for services and free time at the railroad piers?

A. There are charges assessed, but I couldn't admit—

Q. Do you know any difference in the charges, Mr. Laux? [fol. 1772] A. Yes, I think there is some difference.

Q. Well, you name them for me, please.

A. I don't have the tariff in front of me, but the tariff could tell you in a minute.

Mr. Hanifin: I understand Mr. Laux is coming back tomorrow for some cross examination.

Could you get a tariff, Mr. Moerman, and undertake to look through it and advise the record as to the differences in the storage charges and free time at Hampton Roads and New York?

Mr. Moerman: Can you do it by tomorrow, Mr. Laux?

The Witness: I don't think so. They have to ship the tariff down here.

You see, the difference may be for the reason that the Hampton Roads railroads have two sets of rules, one applying on freight to and from Southern Territory and another applying on freight to and from Official Territory.

By Mr. Hanifin:

Q. Are you talking about freight to or from Southern Territory here?

A. I am talking about everything. Now, that is why I say, am willing to admit that they are the same if it makes you happier.

Q. All right. It makes me a little happier.

Now, Mr. Laux, since we are over that hurdle, you indicate that the steamship lines, if I may read your testimony, you say even with equalized railroad rates the Port [fol. 1773] of New York will have substantial handicaps in competing with Baltimore and Hampton Roads. You say, "As I stated in my direct testimony, the steamship lines obtain free dockage, wharfage, storage and clerking at these two ports," and then you go on and say that the steamship lines would save as much as $300 per day which is the average cost of a pier.

Now, in arriving at that $300 a day, did you include storage?

A. No.

Q. You did not.

What did you have in mind in arriving at that $300 a day, what services or facilities?

A. To allow the steamship line to tie up to the pier.

Q. In other words, you are just simply talking about the cost of doing business in New York, aren't you?

A. Well, I am talking about the cost to the steamship line to do business anywhere in the world.

Q. Well, we are talking about New York.

A. The only places where they don't pay it is Hampton Roads and Baltimore.

Q. Well, let's go back to New York rather than the world.

This $300 a day, is that your estimate of the daily cost of maintaining the average pier in New York for a steamship line?

A. No. It is not for maintaining the pier. It is a charge [fol. 1774] that we consider as a reasonable estimate, and I think it shapes up pretty well with the charges made for imports where the terminal operator imposes a dockage charge, like at New Orleans.

Q. It is not, of course, though, incurred for performing any one of these services that you have enumerated here, such as dockage, storage, wharfing, or clerking. It is simply a cost of their lease prorated over a year, prorated by days over a year?

A. No. It is on the basis of so much per gross ton. In other words, if the ship is a very large ship, the gross tonnage would be great and the charge would be assessed on the basis of so many pennies per gross ton of ship.

Q. But your statement says that the steamship lines would save as much as $300 per day. You set forth your statement in terms of cost per day, not tonnage.

A. Oh, I am talking about the tonnage of a ship or vessel, not the cargo. I am talking about like the Queen Mary, for instance, may be 70,000 tons, and it takes up a whole pier. That ship would pay a whole lot more than $300 a day.

Q. Well, now, does the Queen Mary handle freight?

A. Well, very little, not much. But still you see the idea of the use of a pier is based on the size of the ship.

Q. Well, then, do ships such as the Queen Mary, that don't handle freight, or you believe don't handle freight, [fol. 1775] make a contribution to the cost of other ships which move traffic over the piers?

A. No, they don't, not at all. The Queen Mary has its own leased pier. All I am trying to show you or tell you is that when you assess or impose a charge for dockage, the terminal operator measures this charge by the size of the ship, not the cargo carrying capacity.

Q. Well, in arriving at this $300, sir, what was the basic figure you used?

A. I think it was three cents per gross ton.

Q. Three cents for what?

A. Per gross ton.

Q. Now, how did you arrive at that three cents a gross ton?

A. Through experience.

Q. Any studies?

A. Oh, we have had studies made, yes. And—

Q. Any recent studies?

A. No, not recently.

Q. When was the study last made, then, that you have reference to?

A. Oh, I don't know. I couldn't say.

Q. Ten years ago?

A. No, not that long, more recent than that.

Q. Five?

A. I really don't know. Maybe perhaps within the last [fol. 1776] two or three years. We might have some later studies. You see, I didn't make them.

Q. You didn't make them?

A. No.

Q. Well, now, let me ask you another question, Mr. Laux. With respect to this three cents a ton, doesn't that simply represent an allocation per ton of the cost of doing business to a steamship line who leases a pier from the Port of New York Authority?

A. No, not entirely.

Q. Not entirely?

A. No. It is predicated on what other port people at the terminal assess for dockage.

Q. Well, any leased or privately owned pier by a steamship line?

A. Well, there might be some competitive elements in there, too.

Q. Well, now, Mr. Laux, you were indicating, as I said a minute ago, that because of this cost, this $300 which you allege might occur in New York, the equalized rates at the port of New York would have a substantial handicap in competing with Baltimore and Hampton Roads.

Is that, any of that cost of $300 a day or three cents a ton assessed against the freight of the shipment?

A. No, sir.

[fol. 1777] Q. Well, then, how can the three cents a ton or $300 a day affect in any way the competitive position of traffic moving to the Port of New York as opposed to Hampton Roads?

A. Well, we have to depend on the attitude of the steamship line. Naturally every steamship line wants to save money and reduce its cost, and if you have an attractive cargo coming out of Central Territory, the steamship line can offer two advantages to using Baltimore and Hampton Roads.

Q. What is that?

A. One is differential and the other is that the cost to the steamship line would be cheaper. Right today we have—

Q. Do you mean the less traffic the steamship line handles through New York the less its cost will be, Mr. Laux? Is that what you are saying?

A. No. All Iam saying is that the steamship line will endeavor to get as much traffic as it possibly can through those ports where its expenses are the lowest for the steamship line.

Q. Well, now, Mr. Laux, is not this cost of doing business in New York for the steamship lines essentially fixed or measured largely by the cost of the pier which it leases?

A. Not entirely.

Q. Well, what other costs are there besides that?

A. Well, taxes.

Q. Taxes?

[fol. 1778] A. And maintenance.

Q. Do you mean that the lessees of your Port of New York Authority piers pay taxes on the pier properties up there?

A. Well, they don't pay on pier properties, but there are other taxes.

Q. What other taxes?

A. Sales taxes.

Q. Sales taxes?

A. Yes.

Q. Do they pay sales taxes at other places?

A. Well, this is to the City of New York.

Q. To the City of New York.

But with respect to the cost of doing business in New York, insofar as your leased properties are concerned, that is, the cost to the steamship line of leasing the pier, would it not be an economic fact that the more traffic moves through the Port of New York the less the cost per ton or per day would be to the steamship line?

A. Well, I don't know that the steamship lines estimate or calculate their costs along those lines. The steamship lines, they have a pier that they use for their own operations and that pier costs them "X" dollars a year, and, of course, it is designed and managed to receive the vast quantity of freight that is handled to and from New York and adjacent areas.

Q. Mr. Laux, you referred a minute ago to some sales taxes.

[fol. 1779] What, in particular, do you have in mind? Describe the transactions that a steamship line would have to pay a sales tax on in New York.

A. Oh, in buying equipment for use on the dock, rope, fuel oil, lubricating greases.

Q. Fuel oil for the vessel?

A. No. Fuel oil probably for heating the dock.

Q. For heating the dock?

A. Yes. We've got plenty of taxes in New York.

Q. Let's go through these taxes and see what you have in mind.

Fuel oil for heating docks. How many docks are heated up there?

A. Pretty nearly every one of them.

Q. I suppose you have fuel oil for heating office space at the piers, too, is that right?

A. Yes.

Q. Now, would they pay a sales tax on any of the fuel which their ships would use?

A. I don't know whether they still do, or not. I think the bunker fuel is now taken on by these ships at places other than New York. There may be some exception to that, however.

Q. Well, Mr. Laux, do you know if fuel is taken on at the Port of New York if they pay any tax?

A. They don't pay any?

[fol. 1780] Q. Do you know?

A. They did pay a tax on it, the steamship lines.

Q. How long ago was that?

A. 1932.

Q. Are you basing what you are testifying here on on what happened in 1932 when you were in the Eastern Steamship Lines?

A. No, except that it went up.

Q. You know for a fact that the steamship lines pay a tax on fuel which they take on at the Port of New York to the City of New York?

A. They pay a sales tax, I think so. I am not sure about it.

Exam. Boat: We will recess at this time for luncheon until two o'clock.

(Whereupon, at 12:30 o'clock p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 1781] AFTERNOON SESSION

2:00 p.m.

Exam. Boat: Come to order.

EDWARD R. LAUX resumed his testimony as follows:

Cross examination (continued).

By Mr. Hanifin:

Q. Mr. Laux, does the United States Lines handle a large volume of general cargo traffic in and out of New York?

A. I would say they do handle a large volume. Of course, they don't handle as much as they would like to handle on each ship, particularly the line of vessels.

Q. Now, do they have leased piers up there?

A. Yes, sir.

Q. Approximately what is the rental they pay per year for leasing of the pier or piers in New York?

A. Well, it is pretty expensive. I'd say anywheres from a hundred thousand maybe to two hundred and some-odd thousand. That is just a rough guess. It all depends on the pier, the location, and so on.

Q. It is a pretty expensive proposition for them?

A. Oh, you bet it is.

Q. Do other steamship lines have a similar situation in New York as United Lines?

A. Yes, sir. Well, of course, the rental, you know that is their home, that is where they do their business, see. [fol. 1782] And I presume it is warranted because, naturally, the pier facilities is quite an instrument in determining what their costs are to operate steamships from New York.

Q. Well, it has been your testimony, hasn't it, sir, that steamship rates are equalized at Hampton Roads and New York by the steamship lines?

A. Yes, sir.

Q. Now, if the steamship line rates are equalized, then whatever cost a steamship line incurs in handling traffic at any port is not passed along to the owner of that freight or the freight itself?

A. No more so than it is in railroad business.

Q. Well, now, wouldn't you agree with me that if a steamship line incurs heavy costs at a particular port that the logical handling would be for that carrier to want to handle its traffic through the port where it has the static cost or fixed cost, in order to reduce the unit cost of handling the traffic?

A. No, I cannot agree with you, because my experience with steamship men is a steamship line will go anywhere where it can get cargo.

Q. But between ports where he has no cost at one port and a fixed cost at another port, isn't it logical where he would want to handle it where he already has to pay the cost of doing business in order to offset the cost of doing business?

[fols. 1783-1784] A. No. There is many factors involved in the steamship business. It is a critical business. When I mentioned that we are at a disadvantage with respect to these concessions at these other ports, that they have given steamship lines, I had in mind certain types of cargo. For instance, steel and open cars or open top car equipment, they do a loading in Baltimore with a 16-man gang. In New York they use a 21.

Q. We are not talking about that. My examination—

A. That is all part of the cost.

Q. Well, I can appreciate the fact that you did deal with that particular aspect in testimony, but I am talking about fixed costs that the steamship lines have in New York, and you believe it would be in their interest to do business at a port where they have no cost rather than a port where they have high fixed costs?

A. Well, that isn't the problem with every one of them. Now, don't misunderstand me. A good many endeavor to use a port where he can make more money than New York. For instance, now we have got some lines that only operate to and from New York, and they don't prefer to go down to these other ports to pick up freight.

Q. What percentage of the lines, would you say, would prefer to operate from New York?

A. A very small percentage because, you see, most American flag lines operate on subsidies and they have to make

[fol. 1785] all ports of call. They are mostly foreign flag carriers. Of course, you port people in railroads have done a wonderful job of pricing those to go to your ports. As shown in one of those exhibits there, the steamship lines are making these other ports of call, whereas they didn't about 20 years ago.

Q. But you will agree with me, won't you, sir, that your statement in your testimony that the $300 a day cost, which is the average cost for the use of a pier, is not a cost which is passed along to the consumer or would affect—not consumer, but, rather, the shipper or receiver and would not affect the competitive position of the traffic?

A. It wouldn't affect the shipper.

Q. It would not affect the shipper. That is all I have in mind.

A. No. It would not affect the shipper, but, like I said, my testimony, the steamship lines, they do some agent work, too, and they have agents out in Pittsburgh and Chicago that arrange these deals to move traffic via the lower rate ports, and they sell the idea as a saving.

Q. But that is of no benefit to the steamship line?

A. No. That is, from the rate standpoint.

Q. No benefit to the steamship line because they still have their cost of doing business at New York?

A. To maintain and operate at New York, yes.

Q. That's right.

Is it your view, sir, that the steamship lines have any [fol. 1786] influence in the routing of traffic?

A. Yes, sir.

Q. Do you think it is significant?

A. Yes.

Mr. Hanifin: I believe I have no further questions.

Mr. Walker: Let me ask one question, please, sir.

Cross examination (continued).

By Mr. Walker:

Q. Is it your position that a reduction in the rate to New York will get more traffic for New York?

A. No, I don't believe we will get more traffic. I think

whatever additional traffic we will get will perhaps be new traffic. I think I testified along that line before. And of course I was thinking in terms of railroad, that is what I had in mind.

Q. Well, do you think that Hampton Roads caused any erosion of your traffic to New York?

A. Yes, it has.

Q. Differential territory?

A. Yes, sir.

Q. Do you have anything to base that on?

A. Well, we have some figures that were given to us by shippers, and I don't mind telling you you are doing a very good job down there in Norfolk in pulling freight away from New York.

Q. Why are you saying we are doing a good job when [fol. 1787] New York still gets more than double the traffic?

A. Yeah, but not this kind of traffic. This is very nice, attractive railroad traffic.

Q. What traffic are you talking about?

A. Oh, we are talking about canned milk and these relief commodities that are going all over the world.

Q. Don't you know that New York is getting twice as much tonnage from differential territory than Hampton Roads?

A. Not railroad tonnage.

Q. Yes, railroad tonnage.

A. Not according to the exhibits.

Q. Your own exhibit shows it.

A. Well, I don't know of it.

Q. Have you looked at the exhibits?

A. Well, according to the exhibits that we looked at, it doesn't show that we had twice as much railroad tonnage.

Q. From differential territory?

A. Yes.

Q. Have you looked at Mr. Keats' last exhibit?

A. No, I haven't. I am just going by the figures put in for 1955 and '56.

Q. That is what I am talking about.

Do you mean to tell me that you are not aware of the fact that during your test period that twice as much traffic moved

to and from New York to and from differential territory [fol. 1788] as through Hampton Roads?

A. Through Hampton Roads, I'm sorry. I was thinking of Baltimore. There are so many figures here I am all mixed up.

Q. Were you thinking of Baltimore when you said that it had been taking tonnage away from New York?

A. No. I was thinking of Hampton Roads when I said that.

Q. Have you got anything to base that upon, that Hampton Roads has been taking traffic away from New York to and from differential territory?

A. Yes. The data we picked up from shippers transporting.

Q. Don't you know that traffic to and from Hampton Roads has fallen off in the last ten years more than New York?

A. No, I don't know that, and I don't think I have occasion to worry about it.

Exam. Boat: Any further cross except Mr. Macleay?

Mr. Walker: May I ask just one other question.

By Mr. Walker:

Q. Mr. Laux, you are not aware of the fact that during the test period that 12.2 per cent export and import traffic moved to and from differential territory, moved through Hampton Roads, and 27.7 per cent moved through New York?

A. I didn't look at those figures. I am not aware of it.

Exam. Boat: Mr. Moerman, do you want to reserve your redirect and get that all at one time?

Mr. Moerman: Yes, Mr. Examiner, I should like to [fol. 1789] reserve the redirect until after Mr. Laux has been finally cross-examined, and at this time I should like to announce that, at the suggestion of Mr. Macleay, I have obtained a clearance from the Bureau of Census for their Mr. Jordan, who is here in the hearing room, to give whatever aid and assistance he might be able to give to Mr. Macleay in understanding the underlying data and tech-

niques pursued in connection with the figures we have gotten from the Census Bureau.

It is our understanding from Mr. Jordan that they get their figures from the customs house and thereafter, whatever is done, whatever results is purely mechanical, but if Mr. Macleay wants something more, Mr. Jordan is here.

Mr. Macleay: May I suggest, Mr. Examiner, that I think it would be more appropriate if Mr. Jordan were made available after we have had available the underlying data which Mr. Moerman has advised me is being brought down from New York, and which I believe will be available late this afternoon, didn't you say?

Mr. Moerman: We had hoped it would be here by four o'clock. It is on the airplane. But I should like to suggest that, inasmuch as I have gone to the trouble of getting Mr. Jordan here and getting clearance for him, that Mr. Macleay make his own arrangements with Mr. Jordan.

Mr. Jordan, will you rise, please.

This is Mr. Jordan and this is Mr. Macleay. You gentle- [fol. 1790] men get to it.

Mr. Macleay: Would it be convenient for you to be here tomorrow, Mr. Jordan?

Mr. Jordan: Yes, it would.

Mr. Macleay: I would appreciate it very much. I would like to look at these papers before we talk about them, and if you could arrange to be here in the morning I would appreciate it very much.

Mr. Jordan: Any particular time?

Mr. Macleay: If you could be here when the hearing starts at 9:30 we could discuss the situation and arrange a more definite time if it is necessary. But I think if you could be here in the morning we might have a short off-the-record discussion of some of these things and you could explain to me what the situation is.

Mr. Jordan: That is quite all right.

Mr. Macleay: Thank you very much.

Exam. Boat: Well, I take it, then, we can excuse Mr. Laux for the moment.

Will you step aside, Mr. Laux.

(Witness excused.)

Mr. Colgren: Mr. Examiner, as a matter of convenience, I think we would like to depart from the order that we had originally contemplated, and I would like to call Mr. R. L. Keefe.

[fol. 1791] R. L. KEEFE was sworn and testified as follows:

Direct examination.

By Mr. Colgren:

Q. Mr. Keefe, will you state your full name and address for the record, please?

A. My name is R. L. Keefe. My home address is 9 Franklin Avenue, Yonkers, New York.

Q. Are you the R. L. Keefe that prepared the verified statement and accompanying exhibits, RLK-1 through 7, the original of which I have just handed the reporter?

A. I am.

Mr. Colgren: Mr. Examiner, may we have—

Exam. Boat: That statement may be identified as Exhibit 108.

(Respondents' Exhibit No. 108, Witness Keefe, was marked for identification.)

Mr. Colgren: The witness is tendered for cross examination—excuse me.

Mr. Examiner, there were four errata sheets distributed this morning to all parties. There is one for each of the first four exhibits, and if I may make an explanation, they are caused primarily by the fact that we inadvertently used gross tons with a net ton rate and have, in these errata sheets, made that correction.

Now, that has necessitated certain changes in the testi- [fol. 1792] mony of Mr. Keefe. On page 3 thereof, the figures in the second full paragraph have been revised to accord with the figures to be found on the errata sheets opposite Revenue Per Ton.

The first figure in the second full paragraph, presently reading "$8.67" should be changed to read "$8.12."

In the next line below that, the figure "$19.24" should be changed to read "$19.20."

Three lines below that, the figure "$9.40" should be changed to read "$9.38."

In the next line, the figure "$18.01" should be changed to read "$18.00."

In the table at the bottom of that page, under the heading Rate Per Ton, under the heading Baltimore, the figure "$8.67" should be changed to "$8.12", and the figure "$9.40" should be changed to read "$9.38."

The revenue per ton mile opposite Import under Baltimore should be changed to read "1.21¢", the "1.40¢" remains unchanged.

Under the heading New York, the figures under Rate Per Ton, the figure $19.24 should be changed to read "$19.20", the figure "$18.01" should be changed to read "$18.00", and the Revenue Per Ton Mile figure opposite Import should be changed to read "2.47¢".

Exam. Boat: With that explanation, Mr. Colgren, these errata sheets will be made a part of Exhibit 108.

[fol. 1793] Mr. Colgren: Yes, sir. Thank you.

The witness is now tendered for cross examination.

Cross examination.

By Mr. Langdon:

Q. Mr. Keefe, in order that we may understand what you have done on the first four exhibits, let me see if I describe it correctly.

You have taken, for both Baltimore and New York, the revenues as appearing in Mr. Heywood's cost exhibits as assigned to specific commodity movements, and you have then blown that revenue showing up by the total number of tons for the particular commodities, as shown in a combination of Mr. Mollman's Exhibit and Mr. Crookshank's exhibit for both New York and Baltimore.

Is that correct?

A. That is right.

Q. Now, in doing that job, Mr. Keefe, you had an opportunity, of course, to study at first hand the commodity

movements included in the Heywood exhibits, and I ask you whether or not you have any question as to their representative character as showing export-import commodities passing through the—well, I will confine my question to New York.

A. Well, for the purpose of this exhibit, we undertook to accept the statement of Witness Heywood that the figures shown in his exhibits were actually representative for the traffic that was moving.

[fol. 1794] Q. Well, is it your judgment that they were in fact representative or are in fact representative?

A. They are insofar as the Port of New York is concerned, yes, sir.

Q. Now, as to any individual commodity in the Heywood exhibit, do you have any question as to the representative character of either the origin or destination selected and used in that exhibit?

A. No, sir.

Q. Did you, Mr. Keefe, also check the revenue showings in the Heywood exhibit for the individual commodity movements?

A. By "revenue movements" do you mean the rate per ton?

Q. Yes. The showing under the column "Revenues."

A. We checked the rates, that is, the rates have been checked, and we found, according to our calculations, a number of errors in the rates.

Q. Have you corrected those errors in your exhibits?

A. Yes, sir.

Q. So that we can take your exhibits as indicating your view of the correct revenue showings for the movements included in the Heywood exhibit? Is that correct?

A. Yes, sir.

Q. Did you check the average loading as shown in the Heywood exhibits and used by you in your exhibit—in your four exhibits attached to your statement?

[fol. 1795] A. I don't understand what you mean by having to load them.

Q. Well, in the Heywood exhibits there were shown for each commodity movement the loading per car, and I was asking you whether or not you had any question as to the

loading that was used in the Heywood exhibits, or any individual commodity movement.

A. Well, there is nothing in Exhibits 1 to 4 that has anything to do with the average load per car, if that answers your question.

Q. But, in your review of the Heywood exhibit, did you examine the average loadings shown in that exhibit?

A. Only in a perfunctory way.

Q. Did you, in your perfunctory examination, have any question as to any of the loadings therein shown?

A. I would say not in all cases that the average loadings shown in Witness Heywood's exhibits agreed with the figures that we had.

Q. Would you kindly state those instances where your average loadings would be different than those shown in the Heywood exhibit?

A. Well, I made no record, Mr. Langdon, of any of the checks that we made. I don't have the figures. It is just a question as to whether or not Witness Heywood had used the proper loadings, and, in a perfunctory way, we examined them. The average loadings that he showed for his [fol. 1796] account, his representative movements against what we knew to be our average loadings, and we came up with some discrepancies.

Q. Were they of minor character?

A. In most cases, yes.

Q. Now, turn if you would, please, sir, to the compilation at the bottom of page 3, which is the one we have just corrected.

So far as the Rates Per Ton shown in those tables are concerned, they come, do they not, from your first four exhibits that we have just talked about?

A. Yes.

Q. In this showing here, taking Export as an example, where your rate per ton in New York is $18.00 and our rate per ton, as you call it, at Baltimore is $9.38, would you conclude from that that the traffic that you handle at New York is more desirable export traffic than traffic that we handle at Baltimore?

A. No, I would not say that.

Q. Would it be less desirable traffic?

A. I haven't made any comparison as to the desirableness of the traffic from the standpoint of a comparison of revenue per ton Baltimore versus New York.

Q. So the traffic which yields $18.00 per ton which you have at New York is not, in your mind, more desirable traffic than Baltimore's traffic which yields $9.38 per ton?

A. Not necessarily, no.

[fol. 1797] Q. Well, wouldn't it be necessarily so, Mr. Keefe?

A. Well, it depends upon a number of factors.

Q. Including?

A. Well, I would say the principal one would be the average load.

Q. And have you applied to the traffic at Baltimore and Philadelphia the average load for the traffic for which you show the average rates?

A. No, sir.

Q. You haven't performed that operation?

A. We have at New York, but not at Philadelphia or Baltimore.

Q. Well, give me the figures at New York, then.

A. They are in my Exhibit 7.

Q. Where you show for export traffic an average loading at New York of 23 tons, and for import traffic, an average loading of 22 tons?

A. That's right.

Q. What would that give you, then, in the way of average car revenues at New York applying to your average revenue per ton and average loading?

A. Well, the corresponding car revenue on export business accruing during the period of the actual traffic study on export business was $371.96. The corresponding figure on import traffic, $380.77.

Q. Have you the data by which you can make a com-

[fol. 1798] parable compilation for Baltimore?

A. I would say no. The figures in Exhibit 7 show the actual traffic movement broken down as to origin and destination states, as the case may be, and we did not have that information available insofar as the Port of Baltimore was concerned.

Q. Mr. Keefe, from a traffic man's standpoint, when comparing two particular movements, is it more desirable to have higher car earnings, or is it more desirable to have higher per ton earnings than some other traffic with which you are making a comparison?

A. Everything else being equal, naturally the higher the car revenue, why, the better off we would be.

Q. Now, would you please turn to your Exhibit 7, RLK-7. Mr. Keefe, why did you exclude transit traffic on this showing, as indicated in your heading?

A. Because the revenue figures were not ascertainable from the waybills of traffic that had been subject to transfer.

Q. Transit traffic is included in your traffic study, however?

A. Yes, sir.

Q. Why, Mr. Keefe—strike that.

Am I to understand that when you show, as you do here, traffic from the states of New York, Pennsylvania, West Virginia, Ohio, Indiana, Michigan, and Illinois, that you have covered the basic points in differential territory?

[fol. 1799] A. That is correct, in the territory involved in this proceeding.

Q. Is that the territory from which your traffic study is made and submitted by Mr. Crookshank?

A. Yes, sir.

Q. You have no traffic in that study from Wisconsin?

A. We have traffic included in the State of Illinois, which includes the west bank Mississippi River points and the points in southeastern Wisconsin that are now carried in the Hinch 490 class rate tariff.

Q. But that traffic didn't originate in Illinois?

A. Well, it is included in the Illinois figures.

Q. Well, what state includes, then, or do you include any traffic from Missouri?

A. If it is the west bank. St. Louis is included, for example, and the west bank Mississippi points along the CFA-IFA-Western Trunk Line border.

Q. In what state is the St. Louis traffic included?

A. St. Louis traffic is included in Illinois.

Q. Well, did you include in your traffic study any traffic originating in Kentucky?

A. We considered Kentucky as being in unaffected territory as a whole. There are one or two points, Louisville, for example, should have been included in this traffic study, but it was not.

[fol. 1800] Q. Louisville is not included in the traffic study?

A. No, sir.

Q. How about Ashland, Kentucky?

A. No.

Q. Well, now, let's go back to Missouri. You included St. Louis.

Did you include Hannibal?

A. If it is a Mississippi River Point, yes.

Q. Did you include Westalton?

A. Yes.

Q. How about Louisiana?

A. Yes.

Q. Now, let's go to Iowa.

Did you include any traffic in Iowa?

A. Mississippi River points.

Q. What would they be?

A. All of the points located, roughly speaking, on and south of the line of Wisconsin and Illinois down to and including Cairo, Illinois, on the west bank.

Q. What state would they be shown in here?

A. They would be shown in Missouri and Iowa.

Q. Where is Iowa on this Exhibit 7?

A. It is included—

Q. And Missouri?

A. Both Missouri and Iowa points on the river, on the [fol. 1801] west bank of the river, are included in Illinois figures.

Q. So this traffic which you show here from Illinois partly originated in Illinois, partly in Iowa, partly in Wisconsin, and partly in Missouri? Is that correct?

A. That's right.

Q. Do you have the details on that on your work sheets, on that part of the traffic, Mr. Keefe?

A. No. I think the answer to your question as to what we included and what we did not include would be the

points that are shown as base points and points that take that basic in the 28300 1009 tariff.

Q. What I meant was do you have the number of cars or a work sheet showing the number of cars that originated in these states of Wisconsin, Iowa, Kentucky—well, Kentucky you wrote out—Missouri and Wisconsin?

A. No, sir.

Q. Is that the only traffic that you included in your study, the traffic that originated at the river points such as Dubuque or Davenport or Burlington, points like that? Is that the only traffic from Iowa that you included in your traffic study?

A. Just the west bank points, right.

Q. You didn't include any traffic from Western Trunk Line territory that was moving on through rates from Western Trunk Line territory?

[fol. 1802] A. No, sir.

Q. And that would include grain?

A. Yes, sir.

Q. And you didn't include any traffic from Western Trunk Line territory that would be moving through these river points on combination or proportional rates?

A. No. Let me say this, that in connection with transit traffic where there was more than one origin point involved, part of your grain, for example, might have originated in Ohio and part in Indiana or Illinois.

Q. I am sorry, sir. I am having trouble hearing you.

A. Part of your transit traffic, grain, for example, might have originated some in Ohio, some in Indiana, some in Illinois, and some west to the Mississippi River. In placing that type of traffic in our traffic study, we took the largest volume of tonnage in that particular car. If the largest volume of traffic originated in Ohio, Ohio was the origin point of the entire car, and vice versa, if it was any other state, represented tonnage from that particular state.

Q. But you didn't include, as I gather your testimony, all the traffic that moves on these differential rates? Is that right?

A. To and from the territory that we call "affected", yes, sir.

Q. But if it moved on differential rates from Western [fol. 1803] Trunk Line territory, you didn't include it?

A. If in that particular car, the highest volume of traffic was from the Western Trunk Line point, that was excluded.

Q. You realize that in the traffic study of the other lines opposing you that such traffic is included, do you not?

A. I understand that they have included it, yes, sir.

Q. Now, going back to your Exhibit 7 here, on your Column 4, under "Tons", what difference would the inclusion of transit tonnage make in that total figure, under Export, of 1,213,251? How much difference would it make if you had included the transit traffic?

A. I haven't the slightest idea.

Q. In the footnote in that same exhibit, where you undertake to spell out the method used by you in increasing these rates, or, rather, revenues, first am I to understand that, under Column 6, the Revenue As Assessed, that that is the revenue that was assessed under the New York rates? Is that correct?

A. Yes, sir.

Q. Now, in increasing that, as apparently you do in order to produce the revenue shown under Column 12, that is entitled "Revenue Under Present Rates Including Ex Parte 206A," you say that the increase is equivalent to 18 per cent?

A. About that, yes, sir.

Q. Does that take into account the hold downs?

A. No, sir.

[fol. 1804] Q. There are very important hold downs in that traffic, are there not?

A. There could be, yes, sir.

Q. Now, going over to the bottom of page 4 of your statement, 108, and the top of page 5, you give us there, Mr. Keefe, the average load for traffic handled by the lines favoring equalization from territory other than the differential territory? Is that correct?

A. Yes, sir.

Q. So that, as I think was made clear at the time Mr. Crookshank perhaps was on the stand, maybe it was Mr. Baylis, you did make a study of the traffic moving through

New York rail originating or destined to so-called non-affected territory? Is that correct?

A. We made a study that included all import and export traffic through the Port of New York, Albany, Boston, and Portland.

Mr. Langdon: I am going to ask Counsel again if he will be willing to supply the details of this traffic study showing traffic to and from territories other than differential territory moving through New York by rail.

Mr. Colgren: Well, again, in refusing to supply that information, I do so on the basis that I do not see its pertinency to this proceeding, which is an investigation and suspension proceeding concerning specific rates published and suspended by this Commission.

[fol. 1805] Mr. Langdon: Well, Mr. Examiner, we just heard that part of the traffic moving under these differential rates to and from Western Trunk Line territory is not included in the traffic study. Now, that traffic is going to be affected by the decision in this case. What we want is a complete traffic study in the same way that the Baltimore lines and Philadelphia and Norfolk and Hampton Roads lines supplied for this record. In other words, this traffic of the lines favoring equalization shows only a part of the traffic that is going to be affected by these—moving under these rates. And we would like to see what the balance of the traffic is, among other things.

Mr. Colgren: Mr. Examiner, there is a misconception here. That traffic is included in our traffic statistics. It develops that certain revenue statistics could not be readily developed by reason of transits. Nevertheless, the tonnages involved are in our traffic study.

Mr. Langdon: Your witness just said they were not.

Mr. Colgren: Well, I beg your pardon. He did not say that.

I want to make this further point, if you please. There has been some query as to traffic from Missouri, Iowa, and Wisconsin, if you please. Those points from which the traffic were included in our traffic study are those points which are covered in the tariffs and are border points, if

[fol. 1806] you please, of the affected territory, and are included in the differential rate adjustment.

Mr. Langdon: That is just exactly my point. That is, other traffic moving on these rates will be, points west of these break points that Mr. Colgren referred to, included in our traffic study that will be affected by this decision because it is moving under these rates, these differential rates.

Mr. Colgren: Now there is a misconception. We have included in our traffic study all of the traffic moving under the proposed adjustment. Now, I do not understand Mr. Langdon's statement that their traffic study includes other traffic moving on these adjusted rates. I don't believe that that is true.

I think you have been misinformed, Mr. Langdon.

Mr. Langdon: Well, you see, it would be very quickly clarified if we could get this underlying data that I referred to. I am informed, and Mr. Colgren, in turn, is informed that our traffic study does include traffic moving from points in Western Trunk Line territory, not the border points, but moving on rates that would be affected by this decision, and consequently it is a very important part of the traffic to be taken into account.

Now, New York apparently excludes such traffic. We include it. Therefore, the comparison of Baltimore versus [fol. 1807] Philadelphia versus New York and Hampton Roads, until we get the complete traffic showing, is misleading.

Mr. Keenan: Mr. Examiner, could I inquire, when Mr. Langdon talks about rates that will be affected by this decision, does he refer to rates the suspension of which is under adjudication in this proceeding right here in 6615?

Mr. Langdon: Rates that are made in either combination or proportional rates, or otherwise would be affected by this decision.

Mr. Keenan: Well, my question is, is Counsel referring to rates the effectiveness has been suspended, and that suspension is under investigation in this proceeding?

Mr. Colgren: I take it if those rates are changed it is going to change the other rates and use them in combination. Very elementary.

Mr. Examiner, I would like to have my witness, Mr. Keefe, straighten us out on this proposition. I am sure that he can give us in detail the tariffs and, as a matter of fact, they are in an exhibit in this proceeding. I think Mr. Crookshank's Exhibit 2 lists all of the tariffs involved in this proceeding. Now, if Mr. Keefe could please tell us the application of those tariffs, I think we will be straight on the record.

The Witness: Any tariffs that were affected by this proposed adjustment involved only traffic to or from Official territory, known as the differential territory, west of Buf- [fol. 1808] falo, including Pittsburgh, to and including the Mississippi River, southern Wisconsin, and also the west bank points on the Mississippi River. It does not include any adjustment in the rates to and from any point beyond the Mississippi River.

By Mr. Langdon:

Q. And if that traffic originating or destined to points west of the Mississippi River moves under rates which would be changed as a result of this decision, you have not included it?

A. No, sir.

Mr. Keenan: Mr. Examiner, what did Counsel by "that traffic"? I am sorry, but it just wasn't clear to me, that question.

Mr. Langdon: Traffic, as I say, moving to and from points west of the border points that Mr. Keefe regarded as the terminal points for his traffic study. Western Trunk Line territory. In other words, traffic moving today under rates that are affected by this differential adjustment.

Mr. Colgren: If I might point out, Mr. Examiner, those would, by definition, have to be combination rates, and they would not show up in our traffic study for that very reason.

Exam. Boat: Take first meat traffic. I understand that was under combinations on the Mississippi River. Now, what is the situation as to that?

The Witness: If the waybill showed that the origin point [fol. 1809] of meat traffic or grain traffic, or any other

traffic, was subject to transit, showed the origin point in Western Trunk Line territory, it was not included in the traffic study.

Mr. Colgren: Mr. Keefe, you didn't mean it was not included in the traffic study? It was not included in the exhibits as from the affected territory, is that right?

The Witness: I am talking only about the traffic exhibits, the exhibits that are on file.

Exam. Boat: That is RLK-3, for example, on export business?

The Witness: Yes.

Exam. Boat: You show there 79 tons of fresh meats—no, I beg your pardon. That is the import exhibit.

Mr. Colgren: Mr. Keefe, are you familiar with Mr. Crookshank's testimony in this case wherein he said that, during the course of cross examination, that it was his purpose, assuming equalization resulted from this decision, to extend the benefits of equalization to other origins and destinations beyond differential territory?

The Witness: I recall him making that statement, yes, sir.

Mr. Langdon: That is all.

Mr. Bongartz: I have a few questions, Mr. Examiner.

Cross examination (continued).

By Mr. Bongartz:

Q. Mr. Keefe, you state that you are familiar with the traffic aspects of this case.

A. I think so.

[fol. 1810] Q. And that includes, I would assume, a familiarity with the tariffs under suspension?

A. I would say yes.

Q. Do those tariffs under suspension include rates on iron ore and coal?

A. Yes, sir.

Q. Iron ore and coal rates aren't in this case, are they?

A. No, sir.

Q. When you were with the New York Central as manager of its Rate Bureau, wasn't your statement your work

consisted largely with the preparation and analysis of rate proposals? Is that correct?

A. That is correct.

Q. And, in that kind of work, did your analysis include inquiry into the remunerative character of proposed rates?

A. Only in isolated cases, Mr. Bongartz, and particularly on, might I say, point to point movements where there was some question.

Q. You mean where a rate was proposed from one point to another, you considered then whether the rate proposed would be remunerative?

A. Not necessarily from one point to another, but on particular commodities. It all depended upon circumstances.

Q. What kind of rates which were proposed during your experience with the New York Central did you have occa-
[fol. 1811] sion to consider the question of whether or not they were remunerative?

A. Usually on low-grade commodities, short-haul business, principally.

Q. Were those the only rates in which the Central proposed reductions?

A. No, sir.

Q. But you limited your consideration on whether or not the proposed rates were compensatory to these low-grade commodities?

A. Well, Mr. Bongartz, I have sort of a pattern that is drawn for you in connection with rates and rate adjustments.

Q. Who draws it?

A. Well, I think the Commission has had a large part in drawing the pattern of rates, 28300, 15879, numerous specific commodity rates. That largely, in the way that I have determined whether or not a rate was remunerative, was the yardstick by which it was measured.

Q. Your experience, as I understand it, in considering the compensatory character of a rate, was in connection with low-grade commodities? Is that right?

A. Generally speaking, that was the only time that we considered it worthwhile to look into whether or not a

rate was compensatory, or not. If a rate, in our judgment, was very low, well then, we did. In those cases we undertook to examine the compensatory nature of the work from [fol. 1812] the standpoint of the actual operation of the trains, the loadings, and all other features connected with that particular movement.

Q. You did. And did you also get in touch with your cost accounting people at the Central in those regards?

A. No, sir.

Q. You didn't bother with them?

A. No, sir.

Q. At page 3 of your prepared statement, where you list some revenues via Baltimore and via New York, were these revenues via Baltimore on the traffic that you hoped to get through New York?

A. No, sir.

Q. They are not?

A. That results of traffic is actually moving today.

Q. Through Baltimore?

A. Through Baltimore.

Q. Isn't one of the purposes of this case to get that traffic through New York?

A. The purpose of this case is to, the Ports of New York, Albany, Boston, and Portland, including Canadian points, the purpose of this case is to place those points on a competitive basis for through traffic.

Q. Well, it is to get traffic, isn't it?

A. No, not necessarily.

Q. Oh, isn't it?

[fol. 1813] A. We would like to be able to be in a position to compete with it on an equal revenue of rates.

Q. You are not approaching this case from an academic point of view, are you? Aren't you trying to get something?

A. Yes, sir.

Q. Well, isn't what you are trying to get traffic?

A. That is the only way we think we can get it.

Q. All right.

Well, now, these revenues that you show through Baltimore are on traffic that you want to get through New York? Isn't that right?

A. Not necessarily through Baltimore. There is other ports involved.

Q. Well, possibly so, but the particular revenue that you show here for ports other than New York is limited to Baltimore, isn't it?

A. Well, the reason it is limited that way is because the opposition apparently concluded that Baltimore was the key point, and that is the point we used.

Mr. Walker: Would you mind reading that answer?

Mr. Hanifin: Let me hear that answer, please.

(Answer read.)

By Mr. Bongartz:

Q. You had better clarify what you mean by "opposition."

Well, will you agree with me to this extent, Mr. Keefe, [fol. 1814] that this traffic that you refer to at Page 3 of your Exhibit 108, which presently moves through Baltimore, is traffic which the New York lines in this proceeding are trying to get?

Mr. Colgren: Mr. Examiner, I think I should object about this point. It is not for the witness to say what the purpose of the proceeding is. He is a rate man, well qualified, and has given us the benefit of his rate experience, and so on.

I think a lawyer should probably take over after the submission of this factual data.

Mr. Bongartz: It may be better if the lawyers took over then rather than now.

Can I have an answer to my question?

Mr. Colgren: Was that a question or an argument?

Mr. Bongartz: It was a question.

Do you remember it?

The Witness: No.

By Mr. Bongartz:

Q. My question, Mr. Keefe, was, with reference to the traffic at page 3 of your Exhibit 108, presently moving

through Baltimore, which you say produced an average revenue of $8.12 on import traffic and $9.38, both per ton, on export, and I am asking you whether that is the traffic that your clients, or the railroads for whom you appear, are trying to get through equalization of rates?

Mr. Keenan: Mr. Examiner, may I take the liberty of objecting to that question, specifically on several grounds. [fol. 1815] First of all, I don't see how it is within the reasonable scope of the witness's direct. In the second place, the witness's competence to answer it hasn't been established. And, in the third place, I fail to see how it is relevant or material in this proceeding and of any assistance to the Commission in deciding it. It is a matter of argument, exactly as Mr. Colgren has said.

Mr. Bongartz: Apparently the question disturbs Counsel, Mr. Examiner, so I will rephrase it this way.

Exam. Boat: I think it has been stated very generally. This covers it as a composite figure, as I understand it.

What particular traffic does it relate to?

Mr. Bongartz: Let's approach it this way.

By Mr. Bongartz:

Q. What would happen to the revenue at New York if the kind of traffic which moves through Baltimore which you refer to at page 3 were to go through New York?

A. I don't know as I understand what you are trying to get at.

Q. Aside from what I am trying to get at, do you understand the question?

A. No, sir.

Q. The traffic that now moves through Baltimore would go through New York, would that have an effect on the revenue which you show through New York?

A. The total revenue?

Q. This per ton revenue that you show.

[fol. 1816] A. It might.

Q. Well, don't you know that it would?

Exam. Boat: It depends on what kind of traffic.

The Witness: It would depend upon the class of traffic.

By Mr. Bongartz:

Q. Mr. Keefe, you have gone over the traffic exhibits in this case, and you have come up with a revenue per ton for the traffic moving through Baltimore. In order to do that, you had to have some conception of what is moving through Baltimore.

Is that correct?

A. Yes, sir.

Q. Now, I am asking you whether, if that traffic moved through New York, your New York revenue per ton would be influenced by the fact of that additional traffic?

Mr. Keenan: Objection, Mr. Examiner. It is repetitive. The witness has already given his opinion on the subject.

Mr. Bongartz: Oh, he hasn't.

Mr. Keenan: He has. He said it would depend on what the traffic was.

Mr. Bongartz: It is not a proper objection anyway.

Mr. Keenan: It is the fourth time the question has been asked. I think it is a proper objection.

Exam. Boat: What are you assuming, Mr. Bongartz?

Mr. Bongartz: I am assuming only what the witness assumes.

Exam. Boat: That all of this traffic—

[fol. 1817] Mr. Bongartz: No. The witness, if you please, as far as I can read his statement, has said that they can determine what the revenue per ton is on traffic moving through Baltimore. He likewise purports to show what the revenue per ton is on traffic moving through New York. And from his familiarity with the exhibits from which he purportedly obtained these figures, I am asking him what would happen to the revenue per ton at New York if New York obtained this traffic which moves through Baltimore.

Mr. Keenan: Mr. Examiner, if I can respectfully submit, the question is almost—well, it seems to me almost silly, although Mr. Bongartz has never asked such a silly question. So that worries me to call it that. But these figures are developed, as I understand it, from RLK-1 through 4. The arithmetic by which they are developed is perfectly simple. One required no intimate acquaintance with the consist of traffic that was moving, at all, if I understood

Mr. Keefe's testimony correctly. All you had to do was tabulate and compute and you could come up with these answers. Now, to hypothesize that certain of this traffic or all of it in some way would be transferred to New York is a hypothesis the witness hasn't been shown to be qualified to make. He hasn't testified on direct concerning it. I doubt if there is anybody in the room right now, outside, perhaps, the Angel Gabriel, who could give an answer to that question [fol. 1818] without exhaustive study.

Mr. Bongartz: That is very interesting, but—

Mr. Keenan: I object to the question, therefore, as one that will not adduce reliable information.

Mr. Colgren: Well, Mr. Examiner, if the witness understands the question, I don't have any objection to his answering.

Mr. Bongartz: Well, the witness's Counsel, I guess, has cleared up the objection.

Now will the witness answer the question?

The Witness: The question, as I understand, is whether or not, if the New York lines are able to secure additional traffic away from the Port of Baltimore, would it have a tendency to increase the revenue per ton at New York.

By Mr. Bongartz:

Q. Now, that may be a better way of putting it. Now, you answer it that way.

A. Well, I would again say that of course the real answer to that question would depend upon what type of traffic was taken away from the Port of Baltimore in favor of the Port of New York.

Q. Assuming all of it was. This traffic moving through Baltimore that you price out at $8.12 a ton in revenue, import, and $9.38 per ton, export, all of that traffic were to move through New York, wouldn't that have the effect of decreasing materially the revenue per ton that you show for New York?

Mr. Keenan: Mr. Examiner, I object again. There is [fol. 1819] nothing in evidence that warrants the assumption.

Mr. Colgren: Mr. Examiner, I think that the answer is so patent from these exhibits that I fail to see—

Mr. Bongartz: Why don't you give me an answer, then?

Mr. Colgren: Tell him yes, would you?

The Witness: It would have that tendency, yes, sir.

Mr. Bongartz: Thank you.

By Mr. Bongartz:

Q. Mr. Keefe, on page 6 of your statement, you refer to average revenue per car for all cars originated in the United States. You say that was $272.51.

Were all those cars terminated as well as originated?

A. No, sir, not necessarily.

Q. They were not.

Now, I have a little trouble reading this sentence appearing at the bottom of page six and the top of page 7, where you say, "It will be noted that the revenue per car from the traffic study exceeds the United States average by over $100," and then you go on to say this, "for this reason, it is evident that the higher earnings of the import-export traffic indicate a greater degree of compensatory effect from these revenues than is found generally."

Now, can you tell me in simple language what you meant by that sentence? Are you trying to say that because, according to your calculations, revenue from the export-import traffic moving through New York was a hundred [fol. 1820] dollars a car more than the average revenue throughout the United States, that that proves that the rates which your clients are seeking would be compensatory? Is that your testimony?

A. It has that tendency, yes, sir.

Q. What do you mean? Your testimony has that tendency?

A. No. The figures have it.

Q. Can't you come out and say whether what I said is what you have in mind? What do you have in mind?

A. The answer is "Yes."

Q. In other words, you are coming right out and saying that these rates, in your judgment, are compensatory be-

cause they are a hundred dollars higher per car than the average for the country? Is that right?

A. That is one of the reasons.

Q. Well, now, is that the reason?

Mr. Colgren: The witness has already answered that it is one of the reasons.

By Mr. Bongartz:

Q. All right. Then give me the other reasons, please. They are not in this statement here.

A. Well, I think the other reasons are to be found in my Exhibit No. 7.

Q. Would you point them out to me?

A. Well, they are in the totals, in the one group on import traffic, and in the other group on export traffic.

Q. Where are they? What reasons are you pointing to? [fol. 1821] A. The revenue per car and the revenue per ton and the revenue per car mile and the revenue per ton mile.

Q. That is all you are talking about here in your prepared statement, isn't it?

A. That is part of it, yes.

Q. Well, what else is there?

A. I don't understand the question.

Q. What other element, in your judgment, pertaining to whether or not the rates that your clients seek would be compensatory, what other element than these car earnings do you have in mind?

A. Well, Mr. Bongartz, basically what we are dealing with here is a somewhat slight change in what you might call the general rate structure. You have in a large measure here rates that have been in effect for a good many years, some of which have been fixed by the Commission themselves, others which apparently have their approval. What we are attempting to do here is to reduce the rates through New York, Boston, and Portland approximately three cents a hundred pounds, 60 cents a ton, somewhere in the neighborhood of twelve or fifteen dollars a car. Now, if there is anything wrong with the compensatory nature of the rates as a whole, then there is something wrong with the

rates to and from New York. If the rates as a whole are satisfactory, it is my judgment that a reduction of 60 cents a ton in those rates to meet our competition is some-
[fol. 1822] thing which the carriers do every day or to a much greater extent when they are meeting other forms of competition.

Q. Now, you start on the assumption that the present rates are all right? Is that what you have in mind?

A. We are not quarreling with the present rates to and from Baltimore.

Q. What about the rates to and from New York?

A. We think they are three cents a hundred pounds too high.

Q. Don't you think the present rates are all right?

A. The rate structure itself is all right, yes, sir.

Q. Now, when you talk in your testimony, looking at page 7, this difference of over a hundred dollars in average revenue in favor of export-import traffic may be presumed to be quite adequate, whose presumption is that, yours?

A. Yes, sir.

Q. And the only comparison, the only similarity, as I understand your statement, between this export-import traffic and that of the country as a whole is your statement that they both have a line-haul and two terminal services? Is that right?

A. One has a greater line-haul than the other.

Q. Which has the greater line-haul?

A. Import-export.

Q. Has quite a bit greater, hasn't it?

[fol. 1823] A. Yes, sir.

Q. Where your own testimony is 770 miles against 428 miles for the country?

A. That's right. What we are attempting to show there is the $100 difference in the average revenue per car is sufficient—

Q. To take care of that additional 300 miles line-haul? Is that right?

A. Yes, sir.

Q. What about the terminal part of it? Do you think that terminal services at New York are comparable to terminal services all over the country?

A. There is some difference in terminal services performed at almost any port.

Q. Yes, sir. But don't you think that the terminal services provided in New York are particularly burdensome?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. But you didn't give that any consideration in reaching these conclusions that you have reached here in your statement?

Mr. Colgren: Mr. Examiner, how could the witness, if he just now said he didn't know?

Mr. Bongartz: Well, he can answer that question.

Mr. Colgren: How can he give something some consideration he doesn't know? That is pretty patent, isn't it?

[fol. 1824] Mr. Bongartz: Let him say it.

Mr. Colgren: Go ahead. Ask your question.

By Mr. Bongartz:

Q. Can you tell me now? Can you give me the patent answer, the answer is you didn't?

A. You will have to repeat the question.

Q. In reaching the conclusions that you reached here, you gave no consideration to the terminal services involved on this traffic? Isn't that correct?

A. A short answer would be "No."

Q. All right. I'll take it.

And, even though you tried to make in part the export-import traffic comparable to the country as a whole, in that it has, as you put it, two terminal operations as against terminal operations on other traffic, the very figure you use for other traffic did not in every instance include two terminal operations, did it?

A. Well, I would say that it did.

Q. But you based it on this tons originated, did you not?

A. Yes, sir.

Q. So that it could not, in every instance, have included two terminal services?

A. I don't see why not.

Mr. Macleay: Mr. Examiner, I wonder if the witness could speak just a little louder?

By Mr. Bongartz:

Q. I am not quite sure whether you answered this ques-
[fol. 1825] tion, or not, but when you were with the New York Central and you were asked regarding the proposed rates, was your yardstick a comparison of the revenue on such proposed rates with the revenue of rates nationwide? Was that your way of sitting down and telling your management whether or not proposed rates were remunerative, proper for the New York Central to establish? Was that your yardstick?

A. No, sir.

Mr. Bongartz: That is all I have.

Exam. Boat: Any further cross?

That seems to be all the cross examination.

Mr. Langdon: Before Mr. Keefe leaves the stand, I wonder if we can have clearly on the record the disposition of this request of ours for additional traffic data, namely, the data that concerns traffic to and from non-affected territory moving by other lines favoring equalization to New York.

Is it my understanding that that data will not be furnished at our request?

Mr. Colgren: Well, Mr. Langdon, let me read the heading to Mr. Mollman's Exhibit 51, his Chart No. 3 in connection therewith. It is a statement showing by commodity groups and in tons comparison of the total export and import traffic originating or terminating in differential territory and handled via rail during the period August 1, 1955, through July 31, 1956, through the points of Baltimore and New York.

[fol. 1826] Now, we are given to understand that traffic other than originating or terminating in differential territory involved in these figures. Frankly, I don't know whether this is an attempt to confuse the record, or what. We have come before the Commission, we have given a complete statement of the traffic moving under the rates under attack in the I&S proceeding under suspension there-

in. Data relating to movements of traffic under other rates, it seems to me, is entirely impertinent to this investigation. It would take not only a great expenditure of time, but also of money and manpower, neither of which we have available.

I think with that preface, I would sufficiently indicate why we must adhere to our original position, that we will not willingly furnish this additional data.

Mr. Langdon: Well, that answers my inquiry, if they are not willing to furnish it. I should like to draw attention, however, to Mr. Mollman's Exhibit No. 2, which sets forth specifically the traffic from differential territory, from Western Trunk Line Territory, from port area, from Trunk Line and New England territory, from other territories, with totals. The testimony was that from differential territory and included in the differential territory figures were grain, as an example, moving from points in Western Trunk Line territory on rates, proportional rates, or combination rates, whatever the case might be that would be affected [fol. 1827] by this decision. Now, if they are not going to supply it, that ends my request.

Mr. Colgren: Now, Mr. Examiner, I think it is clear to the Examiner and certainly will be to the Commission that, so far as I know, there has been no use made of all this additional data that was gratuitously offered by the opposition which now is being made the basis, I think, for an unusual and entirely unreasonable request for us to supply data which in no sense is concerned with this proceeding.

Mr. Langdon: Well, now, the use to be made of it, of course, awaits the argument.

I should like to ask, then, if this data to assemble it requires so much time and effort, what are the data underlying this recomputed average loading that Mr. Keefe has included in his testimony and which is designed to correct Mr. Mollman's estimate of the average loading of your traffic from points other than affected territory. That is the underlying data we want. It must be already compiled, because you have got the average loading and it is so set forth in the statement.

Mr. Colgren: Mr. Langdon, again I tell you that we made a complete traffic study of all export-import traffic

moving through the Port of New York, Albany, Boston, and Portland.

Mr. Langdon: Exactly what I want.

Mr. Colgren: Exactly what I refuse to furnish without being ordered to do so.

Mr. Foley: Mr. Examiner, in an earlier stage in this [fol. 1828] proceeding Mr. Langdon asked for evidence about the traffic movement from non-affected territory. It was then objected to on the grounds that that was irrelevant, and you so ruled. You said you concluded it was irrelevant. And that is just what you are being asked to press now.

Exam. Boat: I think we went over this.

Mr. Colgren: Mr. Examiner, just as a matter of interest, may I point out that, with all this purported bearing of the chest, and so on, of the opposition, they have not given us a complete traffic study. They have excluded certain tremendous movements of iron ore, coal, certain other commodities.

Mr. Langdon: What commodities other than those not involved in this case are not included in our traffic study, Mr. Colgren?

Mr. Colgren: You say not involved in this case.

Mr. Langdon: Is iron ore involved in this case?

Mr. Colgren: They are export-import movements, are they not?

Mr. Bongartz: We had a separate proceeding, Mr. Examiner, on iron ore.

Mr. Colgren: Nevertheless we are talking about a traffic study.

Mr. Langdon: I am limiting my request for traffic that is moving in this case, the traffic that is involved in this case, and also the traffic, the commodities that are involved [fol. 1829] in this case moving to and from non-affected territory in exactly the same way as we laid it out in our traffic study.

Mr. Colgren: Mr. Examiner, they want their cake and they want to eat it, too. They want to leave out certain choice commodities, and it is all right if we leave out those commodities, which we don't handle, anyway.

Well, I think I have stated my position sufficiently.

Exam. Boat: Well, it is conceivable, of course, that traffic originating in most of this territory, differential territory, might, under certain circumstances, move on combination rates. That is always to be expected, that some will move under combination rates. I don't know that we can compel the responderts to show or anticipate all that type of traffic that might move on such rates.

Mr. Langdon: Well, Mr. Examiner, of course it isn't limited only to combination rates. There are through rates from Western Trunk Line territory that are made on this differential basis. And we have shown it in our traffic study, and all I am asking is if the other side doesn't care to furnish it, all right, but I am asking only that they duplicate what we have done in showing the entire traffic that would be affected by this case.

Mr. Colgren: Mr. Examiner, again I can't understand that statement, because there is no traffic moving from beyond the Mississippi River which is in this case.

[fol. 1830] Mr. Bongartz: Well, at this part of the record I would like to refer the Examiner to page 104 and 105 of the record, Witness Crookshank, and I think that discloses the intention of the respondents in this proceeding.

Mr. Colgren: Nevertheless we have here an I&S proceeding, we have certain rates under suspension. We have nothing but speculation to resort to go to beyond that. Now, for this request, to go to the expense of compilation of figures which have been repeatedly requested of us at this late stage of the proceeding, I think is unthinkable.

Exam. Boat: Did we finish with the cross?

Is there further redirect?

Mr. Colgren: I have a couple of questions.

Exam. Boat: Let's recess for about ten minutes.

(Short recess.)

Exam. Boat: Come to order.

Redirect examination.

By Mr. Colgren:

Q. Mr. Keefe—

Mr. Langdon: May I interrupt again?

Mr. Colgren: I want to make that correction.

By Mr. Colgren:

Q. Did you have some corrections to make to your title to Exhibits 5 and 6?

A. Yes. The titles on Exhibits 5 and 6, we erroneously left off origination and destination carriers of Boston and Maine and the Grant Trunk Railway. Boston and Maine [fol. 1831] in connection with traffic to and from Boston and Portland, and the Grand Trunk in connection with traffic to and from Portland, Maine.

Mr. Langdon: Mr. Examiner, in view of the fact that we are not being supplied with the details with which to check the computations, or, rather, the final results on the bottom of page 4 and the top of page 5 of Witness Keefe's testimony, Exhibit 108, I move that that paragraph starting in the middle of page 4 with the words, "Without understanding," and ending on page 5 with the words "for grain" be stricken, on the ground, as I say, that we have not been supplied with the details to support those computations.

Mr. Colgren: Mr. Examiner, may I point out that this is the first time that we have been asked for the underlaying data of this sort. All of the traffic studies heretofore have been accepted on the basis of the sworn testimony of those putting them in. This is merely a part of the same traffic study.

Mr. Langdon: Well, wait a minute. Off the record. I don't want to burden the record with this, but there is some confusion here. Either I am wrong or you are wrong, Mr. Colgren. But Mr. Mollman estimated the loading on your tonnage to and from other than affected territory, and I understand came up with this figure that Mr. Keefe now undertakes to correct. What we want, and what I

understood we had been denied, was the underlying, were [fol. 1832] the underlying data which supported this average loading for traffic other than going—other than involved to and from affected territory. Now, that is what we are after, and, so far as I understand it, you refuse to supply us with that data.

Mr. Colgren: Mr. Examiner, I draw your attention to the last sentence in the incomplete paragraph at the top of page 5, which says that the correct figures on this traffic for the railroads mentioned, as developed in the traffic study for the period August 1, 1955 through July 31, 1956, are one million, and so on, tons for all commodities, and 303-odd thousand tons for grain.

Now, that, I submit, is from the same traffic study the figures for which have been entered in this proceeding without request for the underlaying data, which, of course, are the waybills, and have been apparently accepted, at least we accepted the statement of the opposition. They haven't up until now queried the authenticity of our traffic study, and, on the basis of those remarks, I wish you would make your ruling.

Mr. Macleay: May I inquire, Mr. Examiner, where those figures are to be found in the earlier exhibits?

Mr. Colgren: I had reference to the traffic statistic studies that have previously been presented in these proceedings.

Mr. Macleay: Could you give me a citation to them, [fol. 1833] Counsel?

Mr. Colgren: Mr. Crookshank's Exhibits 1 to 13. I have forgotten the exact number.

I think there is a misunderstanding between Mr. Macleay and myself. These statistics were from the same traffic study from which the figures in Mr. Crookshank's exhibits were introduced.

Mr. Macleay: But these are not figures taken from Mr. Crookshank's exhibits, are they?

Mr. Colgren: No. I didn't say that.

Mr. Macleay: Well, I submit we are entitled to see the material from which these figures are developed, otherwise this testimony is clearly objectionable.

Mr. Colgren: Mr. Examiner, I will be glad to supply the Commission or these parties with some 12,000 waybills if they would like to have them.

Mr. Macleay: Now, Mr. Examiner, I submit that that is an absolutely improper suggestion. These figures have been worked up. There is no question whatever that they have been worked up or they wouldn't be here. They are in this record in fragmentary form. Some exhibits have individual showings or individual railroads from unaffected territory. Taken pieced together, it is obvious that the figures have been developed, they have been worked. It is not necessary for anybody to search the waybills. They [fol. 1834] are there. And it is from those figures that this witness obviously obtained this information, and I submit that unless that tabulation is made available to the parties to this case, this testimony is clearly objectionable and must be stricken.

Mr. Colgren: Mr. Examiner, this is the tabulation. If they want the waybills, they are welcome to them.

Exam. Boat: Well, there is a great deal of evidence in this record that rests on underlying data and various figures. We can't have every figure in this record. The Counsel's motion will be taken under advisement. The testimony will stand.

Mr. Bongartz: May I ask the witness whether he subscribes to the statement of Counsel that the waybill information was put directly on the statement?

Mr. Colgren: I don't believe I said that, Mr. Bongartz.

Mr. Bongartz: That was my impression of what you said. I got the impression from what you said, Mr. Colgren, that there was no intermediate step between the waybill showing and Exhibit 108.

Mr. Colgren: Well, Mr. Bongartz, you are asking for underlying data. Now, the underlying data for these movements, unless you want to accept our tabulations, are the waybills.

Mr. Bongartz: The underlying data that I understand Mr. Langdon has requested is the data underlying Exhibit No. 108, this gentleman's work sheets.

[fol. 1835] Do you have work sheets, Mr. Keefe?

Mr. Foley: Is this a slight debate on the side, Mr. Examiner, between counsel?

There is nothing before you at the moment. You ruled.

Exam. Boat: We have been over this ground a number of times before. I think Mr. Colgren stated his position, and we needn't go into it any further.

If there are no further questions, you are excused.

Mr. Colgren: I have one question on redirect.

By Mr. Colgren:

Q. Mr. Keefe, what led to a conclusion that—to your agreement with Mr. Langdon's question that the origins and destinations shown in the Heywood exhibits and reproduced in your Exhibits 1 through 4 are typical or representative?

Mr. Langdon: Wait a minute. I don't know whether I understand that question. What led to testimony? What do you mean by that?

Mr. Colgren: Let me rephrase the question.

By Mr. Colgren:

Q. Mr. Keefe, I understood you to agree with a question from Counsel Langdon that the origins and destinations of the Heywood exhibits and reproduced in your exhibits, RLK-1 through 4, were for the purposes of that exhibit reasonably typical.

What led to your conclusion that they were so-called representative?

[fol. 1836] A. The conclusion that we reached that the figures shown on Exhibits 1 to 4 were fairly representative was a comparison with the figures resulting from the preparation of my Exhibit 7. You will notice by comparing the car revenue found in Exhibits RLK-3 and 4 compared with RLK-7, there is a close approximation of the revenue per car, and, for that reason, we felt that if we followed the same procedure in connection with Exhibits 1 to 4, we would come up with the answer that the movements shown by Witness Heywood were fairly represented.

Mr. Colgren: That is all I have.

Exam. Boat: Do you tender the exhibits?

Mr. Colgren: Yes, sir. May Exhibit 108 and its accompanying exhibits, RLK-1 through RLK-7, be received in evidence.

Exam. Boat: They are received.

(Respondents' Exhibit No. 108, Witness Keefe, was received in evidence.)

Exam. Boat: You are excused.

(Witness excused.)

Mr. Keenan: Mr. Cole.

Mr. Langdon: Wait a minute. Off the record.

You undertook to have an agreement with me to have him here Wednesday, then you came up a little while ago and asked to have Mr. Cole here on Tuesday. Now today is Monday. Are you trying to put him on?

Mr. Keenan: I couldn't care less when he goes on. I [fol. 1837] understood it was a matter of convenience to everybody, including you, that he go on now.

Mr. Langdon: No. I am going to insist, in accordance with what was the last agreement, namely, tomorrow.

Mr. Keenan: You can pick any time during this hearing, any hour you want him here. I thought you wanted him now.

Mr. Langdon: Mr. Examiner, I make these arrangements, and then, without consultation of any kind, there is an ex parte change, and we have been trying to accommodate ourselves to the other side, who made a request about another Boston witness.

Exam. Boat: Let's have this off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Moerman: Mr. Examiner, earlier in the day, at Mr. Macleay's request, I promised that we would have available by approximately four o'clock the so-called underlying data on some of the figures and exhibits put in by Mr. Laux. At four o'clock our man came in from New York. He is here. He does have the material and the letters to and from the Census Bureau, and if Mr. Macleay wants to have Mr.

Laux back, we now have the data. Mr. Laux could resume the stand.

Mr. Macleay: Mr. Examiner, I would like an opportunity to take a look at this material before Mr. Laux comes back on. It might be able to speed things up a little bit if we did [fol. 1838] it that way. I understood we would have this material available this evening and Mr. Laux would be available tomorrow. However, of course, Counsel may return his witness at this time if he wants to and we will start wading through it on the record.

Mr. Moerman: Well, he is not my witness. I tendered him for cross-examination, and he is your witness, and you put him off the stand temporarily until you got this material. It is here. Now, you make up your mind whether you want him.

Mr. Macleay: I would prefer to adhere to our original agreement, Mr. Examiner, which was that we would have an opportunity to take a look at this material with Dr. Gilbert giving us, perhaps, a little advice about it, and then we will put the witness back on the stand and the matter in evidence.

Mr. Moerman: Mr. Macleay, I am sorry, I don't remember anything else but that you wanted the material. It is here in the hearing room. We are waiting to go on with this case. Now, do you want Mr. Laux now, or don't you?

Mr. Macleay: I just said I do not. I would much prefer to have him tomorrow, when I have had an opportunity to examine this material. That was the understanding that I had thought we had reached.

Exam. Boat: Well, that was my understanding, too, that he would proceed with his cross examination after he had had an opportunity to look at this material. I didn't know [fol. 1839] how much time he expected to take for that purpose.

Mr. Macleay: I don't know either, Mr. Examiner. I haven't been privileged to view it yet.

Mr. Moerman: Would you bring your material forward, Mr. Gilbert?

Mr. Examiner, Mr. Gilbert had a small rebuttal statement which I have here, and I think without involving Mr. Gilbert in these matters which are joint between Mr. Laux and himself, I could call Mr. Gilbert now and put in this rebuttal testimony as soon as I get hold of him.

JEROME GILBERT was recalled and testified as follows:

Direct examination.

Mr. Moerman: Mr. Examiner, the witness has been previously sworn. I now have before me and ask that it be marked for identification, a verified statement of Jerome Gilbert marked "Rebuttal Testimony."

Exam. Boat: It may be identified as Exhibit 109.

(Respondents' Exhibit No. 109, Witness Gilbert, was marked for identification.)

Mr. Moerman: The witness is tendered for cross-examination.

Mr. Langdon: There is only one question, aside from a possible use of Mr. Gilbert tomorrow in helping to explain the situation with Mr. Laux.

Cross examination.

[fol. 1840] By Mr. Langdon:

Q. On your exhibit, Mr. Gilbert, page 3, you refer, in Line 3, to an average estimated weight of 27.85 tons per car included in Mr. Mollman's Exhibit MLM-3.

Do you find that?

A. Yes, I have.

Q. Have you, since preparing your statement, read Mr. Keefe's testimony on this same subject?

A. No, I have not.

Q. The two testimonies, then, two statements have not been coordinated?

A. No. My testimony was as of June—just a year ago, June, 1957, when I put it together, and there were questions at that time how it was derived, and the exhibit that you now have before you explains it.

Q. Well, my question is, have you read Mr. Keefe's statement, Exhibit 108, as it refers to this same subject on pages 4 and 5?

A. I have read Mr. Keefe's in a rather cursory manner, but it was—I answered the question. The testimony that

is here is updating the questions that you had, Mr. Langdon, as to how it came and it did not relate to Mr. Keefe's testimony, but related to what I had put in the record.

Q. And you are still taking the same position, then, after reading Mr. Keefe's testimony? Is that correct?

A. If I were to see Mr. Keefe's testimony and there would [fol. 1841] be any differences, I would only be glad to permit any corrections.

Mr. Langdon: That is all.

OFFER IN EVIDENCE

Mr. Moerman: No redirect.

I offer Exhibit 109, Mr. Examiner.

Exam. Boat: That exhibit will be received.

(Respondents' Exhibit No. 109, Witness Gilbert, was received in evidence.)

Exam. Boat: You are excused in connection with this one. I understand that you will be back.

The Witness: Yes, I will be back.

(Witness excused.)

Exam. Boat: Is there another witness we can handle now?

Mr. Langdon: Well, Mr. Colgren and I agree, with your concurrence, Mr. Examiner, that, since Mr. French is going to be the next witness and he is not going to be short, that we go over until tomorrow.

Is that satisfactory?

Exam. Boat: Yes, that is agreeable with me if there is nothing else that we can handle.

Mr. Langdon: You see, we have only then Mr. French and Mr. Cole and what remains of Mr. Laux, plus Mr. Gilbert.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: We will adjourn until 9:30 tomorrow.

(Whereupon, at 4:15 p.m., the hearing was adjourned until 9:30 a.m., Tuesday, June 17, 1958.)

[fol. 1842]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 6615

Fourth Section Application No. 32204

[Title omitted]

Tuesday, June 17, 1958.

Met, pursuant to adjournment, at 9:30 a.m.

Before: M. L. Boat, Examiner.

APPEARANCES:

(As heretofore noted.)

ADDITIONAL APPEARANCE:

Ann C. Gardner, 18th & F Streets, N. W., Washington, D. C., appearing for General Services Administration, Respondent.

[fol. 1844] PROCEEDINGS

Exam. Boat: Come to order, please.

KENNETH COLE was sworn and testified as follows:

Direct examination.

By Mr. Keenan:

Q. Mr. Cole, did you execute a verified statement dated May 21, 1958, bearing the docket number I. and S. No. 6615, and filed in this proceeding?

A. I did.

Q. Have you read the statement?

A. I have.

Q. And do you know the contents of it?

A. Yes.

Q. And are the contents of it true?
A. Yes, sir.

Mr. Keenan: May it be marked for identification, Mr. Examiner, please?

Exam. Boat: Yes, sir. We can identify that as Exhibit 110.

(Respondents' Exhibit No. 110, Witness Cole, was marked for identification.)

Cross examination.

By Mr. Shannon:

Q. Mr. Cole, before getting into the specific details of your study, I wonder if we might develop in a rather general way how you went about preparing this study.

[fol. 1845] As I understand it, you have undertaken a survey for the New Haven at the Port of Boston for the terminal costs on export and import traffic.

Is that correct?

A. That's right.

Q. Did you have anything to guide you in this study? What procedure, in general, did you follow?

A. In general, I went to Boston, looked over the operation and determined costs on a direct basis as far as I could. I tried to reflect the actual condition.

Q. Now, when you got around to calculating these costs, did you rely upon anyone else's testimony in this case, work sheets, and so on, as far as procedure goes?

Mr. Keenan: May Counsel explain what he refers to by "these costs", just as a means of clarity.

Mr. Shannon: What I am trying to get from the witness is simply a statement that he calculated his costs in reliance upon Witness Heywood's work papers, as far as procedure.

By Mr. Shannon:

Q. Was that it?

A. I would say my general approach was the same as

Witness Heywood. That is, the study of the actual operation.

Q. I see.

Now, following his procedure in general, and you derived a cost per car for export-import traffic at Boston?

[fol. 1846] A. That's right.

Q. And then you also derived a supplemental per ton figure which you then used in connection with the actual movement to get the cost per car?

A. The cost is divided in two parts, the part that varies with the car and the part that varies with the contents of the car.

Q. I see.

And then, on page 3 of your testimony, you set forth in two columns these two types of figures, the average cost per car, and then the average cost per ton of the various types of cars?

A. Yes, sir.

Q. And you come up with a cost per car, per box car, at the Port of Boston with a net load of 27.7 tons of $127.46.

Is that correct?

A. That is correct. That is on page 4.

Q. And then, using the cost studies of Witness Heywood and Witness Mollman and Witness Petterson, you also obtained similar figures for those other ports?

A. Yes. From that detail I determined what I understood to be the cost per car and cost per ton. I took the cost per ton times 27.7 tons and added it to the cost per car to arrive at figures shown on page 4.

Q. Now, Mr. Cole, would you turn to your Appendices A [fol. 1847] and B in your testimony.

Would you indicate in a general way how you set these up? Take, for example, Appendix A.

A. Well, Appendix A, the basic commodities and the number of cars and the revenue and the cost, except for the cost for the Port of Boston, are taken from Witness Heywood's papers JLH-1 and 2, and to the costs shown there, I added the cost for the Port of Boston based on the type of car and the weight of the contents, using my unit

cost. That is to obtain Column 6. Then the out-of-pocket cost, I think I explained that in my testimony.

Q. Well, then, as I understand it, for the inland terminal cost and for the line-haul cost, you simply took Witness Heywood's figures in his exhibits and you added to that your Boston port terminal study figures?

A. That's right. As I explained, there was that gap in Heywood's Exhibits JLH-1 and 2. There was no cost for the Port of Boston. This figured them and put them in and made the exhibit complete, in my opinion.

Exam. Boat: You show the total cost, then, in Column 5?

The Witness: The total cost in Column 5 and out-of-pocket cost in Column 7.

Exam. Boat: What period did this cover?

The Witness: The costs represent the year 1957.

Exam. Boat: And the cars that you have shown there [fol. 1848] moved during?

The Witness: The cars and the revenue were taken from Witness Heywood's Exhibit marked JLH-1 and 2.

Exam. Boat: I see. Thank you.

By Mr. Shannon:

Q. Mr. Cole, what revenue do you use here? Is this revenue based on the present rates at the Port of Boston?

A. I took it just as it appeared in JLH-1 and 2. I wanted to complete the comparison that was started, but it was incomplete until I put in some cost figures for the Port of Boston.

Q. But your revenue figures, now, that is based on—

A. It was taken and lifted right out of JLH-1 and 2.

Q. And they are rates to the Port of Boston? Is that correct?

A. I am not a rate man. I accepted them as they appeared and made no change in them at all.

Q. Well, isn't it true that he used the rates that were and still are in effect at the Port of Boston?

Mr. Keenan: Mr. Examiner, the witness has indicated he is not a rate man and he is not tendered as an expert on what Mr. Heywood did or what rates there are. The ex-

hibits speak for themselves, and I just simply suggest that we live with his statement that he took it from Mr. Heywood's exhibit, for what it is worth. We know what is in Mr. Heywood's exhibit. I am not sure that the witness does. [fol. 1849] Mr. Shannon: Well, the witness has put in an appendix here which is supposed to be a compilation. Surely he knows what the underlying figures that went into it are, and I don't see why he can't state clearly what this revenue figure is.

Mr. Keenan: He stated what they are. He says that the underlying revenue figures came from JLH-1 and 2, and then, if you want to inquire from him further where those figures came from before they got on JLH-1 and 2, he says he doesn't know, and he doesn't purport to be competent on that.

By Mr. Shannon:

Q. Then you don't know whether this revenue is based on rates presently in effect at Boston?

A. I read Witness Heywood's statement. My recollection was that he described them as rates to and from Boston, but, frankly, my knowledge of rates is very limited.

Q. Well, let's assume that that is correct.

As you know, the New Haven is trying to reduce its rates to and from differential territory to the Port of Boston and down to the Baltimore basis.

Now, if that is accomplished in this proceeding, isn't it true, Mr. Cole, that a large number of these movements, your margin between revenue and total cost, where you have such a margin, would decline substantially?

Mr. Keenan: Mr. Examiner, to what in the witness's direct examination is this line of inquiry referring?

I don't recall a word in Mr. Cole's direct testimony—the [fol. 1850] question is rhetorically directed to the Examiner, of course, but I would like this clarification from Counsel—I don't recall anything that Mr. Cole said on direct that purported to assert what rates have been published or what revenues will be yielded. All he undertook to do was to say that there was a revenue situation which

Mr. Heywood's exhibits purported to demonstrate, and assuming for a moment the accuracy of that—

Exam. Boat: Well, I think that is substantially correct.

Mr. Shannon: Let me ask Mr. Cole this.

By Mr. Shannon:

Q. Is it not true, Mr. Cole, that even under these present Boston rates which you show here, a large number of these movements are non-compensatory on out-of-pocket as well as a full cost basis?

Mr. Keenan: Objection until Counsel explains what he means by the word "large." I have no objection to pointing out specific instances or toting up numbers. General characterizations like that are not useful in the record, I don't believe.

By Mr. Shannon:

Q. Mr. Cole, are there any movements in here which are non-compensatory on an out-of-pocket basis?

Mr. Keenan: I didn't hear the question. I am sorry.

Mr. Shannon: Would you repeat it, please?

(Question read.)

The Witness: Well, in the case of 499, one car shows a ratio of 124.78. In the case of—

[fol. 1851] Mr. Keenan: For clarification, may the record note that the witness is referring to Appendix A?

The Witness: This is Appendix A that I am looking at.

Then, on the same sheet, the third from the last line, Group No. 735, that shows 105.99, commodity 763 shows 103.14.

By Mr. Shannon:

Q. How about Appendix B? You have some on that, then.

Exam. Boat: We needn't go into that. The exhibit speaks for itself.

The Witness: On Exhibit B—

Mr. Keenan: Mr. Cole, you are relieved from the necessity of answering any further.

By Mr. Shannon:

Q. Now, if we will reduce that revenue to the Baltimore basis, you would then have some more non-compensatory movements, wouldn't you, Mr. Cole?

Mr. Keenan: Objection. There is nothing, so far as I know, in evidence to indicate that revenue is not already at the Baltimore basis, in the first place, and, in the second place, the witness has not been tendered as competent with regard to what would happen to revenues if rates were changed.

Mr. Shannon: Well, the witness has already stated that he understood that this was on the Boston basis. The record will show that.

Mr. Keenan: Well, I didn't hear that question and answer.

Exam. Boat: Well, we needn't go into that, either, because those computations can be made from this exhibit.

[fol. 1852] Mr. Keenan: Yes. If I heard that question, I would have objected to it, because the witness doesn't purport to be competent on it.

By Mr. Shannon:

Q. Mr. Cole, does your railroad serve the Port of New York as well as the Port of Boston?

A. Yes.

Q. And you have prepared a cost study showing the terminal costs of the New Haven at the Port of Boston?

A. That is correct.

Q. Have you prepared such a study for the Port of New York?

A. I have not.

Q. In view of the fact that your railroad serves both ports and the fact that you have prepared such a study for the Port of Boston, may we surmise that the New Haven considers the costs at the Port of New York as a responsibility of someone else?

A. I never heard that discussed. I wasn't asked to make any study for New York. The only study I was asked to make was Boston.

Q. And you don't know why there is no cost study here in the record from the New Haven for New York?

A. No, I don't know why. I do not know that our share of the tonnage in New York is minor, relatively minor compared with the total movement.

Exam. Boat: That is, you are speaking of the move-
[fol. 1853] ment to and from differential territory?

The Witness: Yes, sir.

By Mr. Shannon:

Q. Then the New Haven, of course, is primarily concerned with the Port of Boston, that is, where their largest volume of traffic moves?

A. I am not in a position to say just what our position is on it.

Q. Now, Mr. Cole, where in your work papers do you summarize these expense items that go into the Boston terminal cost?

A. The first summary sheet is—you are referring to my work papers—the first summary sheet is marked A-1. That summarizes the cost per car and the cost per ton for tank, other open top, and other traffic.

Q. Now, in considering these work papers, I think we can, for the purpose of cross examination, eliminate, for the moment, any consideration of your traffic other than box cars, since that is the one you used in your testimony for the basis of comparison of these various other ports, and, as I understand it, you have taken, well, you have here yard expenses of $21.69 a car on this box car traffic.

Is that correct?

A. That is correct.

Mr. Keenan: Excuse me. What page is Counsel referring to?

Mr. Shannon: This is A-1 of the work sheets.

By Mr. Shannon:

Q. And your next item is facilities for general yard [fol. 1854] operation, and what is your figure for that?

A. $1.46.

Q. Well, you have got various other items here. Let's consider this yard expenses first.

Do you break that down further, Mr. Cole, in your work sheets?

A. There is supporting detail for that, yes, sir.

Q. And on what page is that?

A. Well, the first supporting sheet is A-2.

Q. Now, you have here various items under this yard expense, maintenance of way and structures, for example.

What do you include in that?

A. There are other work sheets beginning with A-7 that support the items in maintenance of way expenses. It shows by primary accounts the direct accounts, the principal direct accounts, 202 to 221. There are other semi-direct and also overhead accounts spelled out pretty well in the next three or four work sheets.

Q. Mr. Cole, let's consider this item Station Expenses that you have on your summary sheet, A-1.

I think you break that down on page 4 of your work sheet? Is that correct?

A. That is right.

Exam. Boat: Is that A-4?

Mr. Shannon: A-4, yes, sir.

[fol. 1855] By Mr. Shannon:

Q. I notice here you have an item of expense here, Station Employees.

What do these employees do, in general, Mr. Cole?

A. Well, the largest item is the loading and unloading of the traffic in and out of the cars, and supervisory forces, also the clerical work in connection with waybills.

Q. Loading and unloading of the cars.

Now, where are you speaking of as far as that is concerned, Mr. Cole? Do you mean on the piers?

A. This is confined to the export-import traffic, the handling that the railroad is responsible for.

Q. Well, now, what handling is that? Does that go up onto the pier, these employees?

A. The operation, as I understand it, as I saw it on the export freight, we unload it out of the car and place it on the floor. On the import, we take it off the floor and into the car.

Q. Well, now, Mr. Cole, where in the Station Expenses do you have maintenance and depreciation on pier facilities—strike that.

Mr. Cole, what kind of pier cost does the New Haven have at Boston?

A. Just what do you mean by "pier cost"? Do you mean loading and unloading of freight?

Q. No. I mean, in addition to that, what do you have in the way of pier cost? What do you have in the way of—[fol. 1856] A. The principal item is a wharfage charge, 15 cents per ton.

Q. Well, how about maintenance and depreciation on pier facilities, and insurance, and taxes, return on investment, dredging, and all that sort of thing associated with the operation of piers? Haven't you got something for that?

A. No, we have no expense that I know of on that.

Q. You don't have any expense of that kind?

A. No, sir.

Q. Does the New Haven have any piers at all at the Port of Boston?

A. No, sir. That is, we don't own or maintain any.

Q. You don't own or maintain any piers at the Port of Boston.

Who does own them? Who does maintain them?

A. Well, the facilities that we use is the Army Base. That is operated by the Tidewater Terminal Company. And then there is the Commonwealth Pier. That is the State of Massachusetts operation. They have an agency that operates it. And the Castle Island facilities, I believe that is operated by a steamship company. In all cases, our expense is 15 cents per ton loaded and unloaded.

Q. 15 cents a ton.

Do you mean that that is the only expense that you have at Boston other than this loading and unloading that you speak of?

A. As far as the use of the piers is concerned and the [fol. 1857] maintenance of the pier facilities, the 15 cents per ton covers it.

Q. Now, what about this 15 cents a ton? What is that figure, Mr. Cole?

A. That is the figure that has been agreed upon between the railroad and the operators of these facilities. That is the amount that we pay.

Q. Do you pay a flat 15 cents a ton regardless of the traffic, is that right, the type of traffic?

A. I think the Army part of it may be possibly nothing, but it is never any more than 15 cents a ton.

Q. Never any more.

The rate doesn't vary with the volume of traffic?

A. No, sir.

Q. And you have a contract, then, I take it, with these various people, under which you pay 15 cents a ton and no more?

A. Yes. This is an agreement that spells that out.

Q. Would you by any chance have a copy of that agreement here with you?

A. No, I haven't.

Q. You said, Mr. Cole, that you weren't sure whether or not anything is paid to the—at the Army Base Pier on this traffic.

A. I possibly was not clear on that. It is paid at all three facilities. There is a very limited class of traffic that the Army Base has free use, the U. S. Army has free [fol. 1858] use of the facilities. Any loading or unloading of cars for the Army, my understanding is that 15 cents would not be involved. But all the tonnage that I show in here in my cost I have used 15 cents per ton. In other words, I didn't reduce it down for U. S. Army tonnage.

Q. Well, now, Mr. Cole, I take it you are aware that at the Port of Hampton Roads as well as at some of the other ports involved in this case, the railroads have very heavy expenses for maintenance, depreciation, and all the other charges associated with pier operation.

You are aware of that?

Mr. Keenan: Mr. Examiner, again may I inquire of Counsel what that particular question has to do with the witness's direct?

The witness has not been tendered as being the slightest familiar with operations other than at Boston.

Mr. Shannon: Well, he purports to compare terminal costs here with various ports, and it certainly is relevant to know his knowledge on the subject at the other ports, how they are obtained, and how those costs are obtained.

Mr. Keenan: Mr. Examiner, Counsel is only partly right. The witness has purported to compare not what the costs are at Boston and other ports, but what he has found the cost to be at Boston with what the Southern tier witnesses have said the costs are at the other ports. He is, there- [fol. 1859] fore, for the purposes of his testimony, has assumed that the Southern tier witnesses have told the truth and been accurate. He claims, at least as I read his direct, no direct knowledge whatsoever of what operations are conducted at Southern tier ports.

By Mr. Shannon:

Q. Mr. Cole, even if your railroad doesn't have to pay these heavy pier costs, isn't it true that these costs must be borne by someone even if it is the benevolent taxpayer, the Commonwealth of Massachusetts.

Mr. Keenan: I object, Mr. Examiner, on the basis that question is irrelevant. It could be misleading to the issues of this case.

Mr. Shannon: What is misleading or irrelevant about it? I think it is a highly important question in this case.

By Mr. Shannon:

Q. Isn't that an economic cost, Mr. Cole?

Mr. Keenan: Mr. Cole, excuse me. I have an objection pending to the line of inquiry concerning who pays what pier costs as long as the railroad involved, which is the carrier now under investigation by this Commission, so long as the railroad involved does not incur that expense. The witness says the railroad incurs no such expense.

Exam. Boat: Objection sustained.

By Mr. Shannon:

Q. Mr. Cole, do you or do you not know that the port terminal cost for the Port of Hampton Roads includes heavy expenditures for pier maintenance and depreciation?

[fol. 1860] Mr. Keenan: Mr. Examiner, I object again on the double that this is demonstrably beyond the witness's competence in the first place, and, in the second place, because it is way outside the scope of his direct.

Exam. Boat: I understand he only took the costs that were shown on Witness Petterson, was it?

Mr. Keenan: That is correct. Witness Warren, I think.

The Witness: Witness Petterson and Witness Warren, that is right, sir.

By Mr. Shannon:

Q. Mr. Cole, would you turn to page A-50 of your work sheets.

Now, on this page, as I take it, you set forth the cost per car, box car traffic, with average loading of 27.17 tons based on the cost exhibits of Witnesses Warren, Petterson, and Heywood.

Is that correct?

A. Warren, Petterson, Heywood, and Cole.

Q. Yes, sir. And Cole.

Now, would you read for me there the total cost per car that you have taken for the Port of Philadelphia?

A. I might explain that total. The total cost per car at Philadelphia for the 27.7 tons is $126.99.

Q. And that is the same figure that you then have used on page 4 of your testimony, is that right, where you have this tabulation?

[fol. 1861] A. Yes, sir.

Q. Now, would you also give me the figure there for the Port of Baltimore?

A. $111.44.

Q. That is the same figure that you use over here on page 4 of your testimony, too, isn't it?

A. Yes, sir.

Q. Now, in this tabulation on page 4, you don't have a terminal cost figure for the Port of New York, but in your work sheets you do have that figure, and I wonder if you would read that, please.

Mr. Keenan: Just a minute, Mr. Cole.

Again I should like Counsel to explain what in the witness's direct testimony has anything whatsoever to do with this line of cross examination. The witness has undertaken in no way whatsoever to discuss New York costs, has not undertaken in any way to be competent concerning them. We have made full disclosure of work papers, which include many, many computations which the witness has made which have not gone into his direct testimony because, in the opinion of the attorneys on the case, they weren't relevant to what he was tendered for. I object to Counsel's going off on a kind of a spree outside the scope of the witness's direct, Mr. Examiner.

Exam. Boat: Well, let's be brief, Mr. Keenan, here.

Mr. Keenan: I am sorry, sir.

[fol. 1862] Mr. Shannon: Mr. Examiner, there is simply one figure in here. He has taken these from Witness Heywood's exhibit. He has a figure for Baltimore, one for Philadelphia, and one for New York, and, just to complete the picture, I see no reason in the world why the New York figure cannot be stated so that it will fit in with this comparison on page 4.

Exam. Boat: Do I understand that you are asking him about the 292.85 figure in the work sheet?

Mr. Shannon: Yes, sir. That is the figure.

Exam. Boat: And you want to get the supporting data for that?

Mr. Shannon: No, no. I just simply wanted the witness to read that figure for us so that we would have that along with the others.

Exam. Boat: Well, I think it is in his work papers. I don't see any objection to having it if he wants it on the record.

Mr. Shannon: Thank you, sir.

Mr. Keenan: If who wants it, Mr. Examiner?

Neither the witness nor do I want it on the record.

Exam. Boat: Well, it is in the work papers here, and I don't see—

Mr. Keenan: But not in his direct testimony, sir. His work papers are not tendered in evidence, they are tendered for clarification, so counsel can follow the evidence. [fol. 1863] Mr. Shannon: Well, he lists this figure along with the one for Baltimore and Philadelphia, and he states the Baltimore and Philadelphia figure in his tabulation here, and to get the complete picture, I don't see why we can't have the other one, too. The Examiner has so ruled.

Exam. Boat: It is merely a restatement of someone else's figure, isn't it?

Mr. Shannon: That is correct.

Mr. Keenan: If Counsel wants to take the witness as his own, then have the witness testify on behalf of the Southern tier concerning New York costs, I have no objection, but this is cross examination and it is outside the scope of direct, Mr. Examiner. I do object vigorously to this sort of—the inclusion of this sort of evidence.

Mr. Shannon: It is not outside the scope of direct at all. I think we are perfectly entitled to get it in.

Exam. Boat: Well, I assumed that he had used this 292.85 figure in his direct in some way or another.

Mr. Keenan: No, sir, he has not.

Exam. Boat: What is the purpose of showing it in his work papers, then?

Mr. Keenan: I don't know why. The witness's work papers, Mr. Examiner, include the witness's computations made for a number of purposes, but the sole scope of the witness's testimony, I respectfully submit, is right there [fol. 1864] in Exhibit 110.

Mr. Shannon: Well, these figures that are used on page 4 come from this A-50 in his work sheets, and he has there this figure for the Port of New York, and since he has—

Exam. Boat: Well, I don't understand that he has carried that figure into his testimony.

Mr. Shannon: No, sir. That does not appear in this tabulation. That is exactly what I want him to do, to state that figure.

Exam. Boat: Well, I think the objection is sustained.

By Mr. Shannon:

Q. Now, Mr. Cole, with the aid of Mr. Heywood's inland terminal cost and line-haul cost, and using your own Port of Boston terminal cost, you have shown the revenues and costs for various movements to and from the Port of Boston.

Did you give any thought to preparing exhibits which would compare the total cost of transporting various commodities to and from differential territory to the Port of Boston, on the one hand, and total cost of transportation for such commodities to the Port of Hampton Roads, on the other, that is, a comparison of costs all the way from differential territory to Boston as compared with the same commodity movements all the way to Hampton Roads?

A. I did not attempt anything like that.

Mr. Shannon: Mr. Examiner, that concludes my cross [fol. 1865] examination of Witness Cole, but I would like to make this statement.

Exam. Boat: I don't think you need the statement. If you have any more questions, you can ask them.

Mr. Shannon: I want to request permission, in view of the fact that his testimony is not in the nature of rebuttal at all, but a new element in this case, an element involving costs which the respondent railroads have heretofore refrained from putting in at all, I want to request permission to file an exhibit which would show the total costs of various movements from differential territory to the Port of Boston.

Exam. Boat: Well, that will be another matter. We will take that up when we get to it.

Mr. Shannon: All right, sir.

Exam. Boat: Any further cross?

Mr. Keenan: Mr. Examiner, Counsel—

Mr. Langdon: Wait a minute. I have some questions.

Mr. Keenan: Oh, I am so sorry, Mr. Langdon.

Well, perhaps even if I may be permitted before Mr. Langdon inquires, I might be able to shorten something up.

Mr. Shannon asked the witness, Mr. Examiner, whether the revenues which the witness was testifying about in

Appendices A and B of Exhibit 110 were on the Boston or on the Baltimore basis. I don't know what the witness said in answer to the question, or whether the witness [fol. 1866] knew. I have since ascertained that they are on the Boston basis, and I should be glad, in the interest of truth and accuracy, to stipulate with Counsel that that is the case.

Mr. Shannon: Fine. Thank you.

Mr. Keenan: Will Counsel agree with me, Mr. Examiner, that the way to determine what the revenues are on the Baltimore basis, so far as Boston movements is concerned, is to look at JLH-5 and 6?

Mr. Shannon: Well, I simply agree with you that he has used Boston figures.

Mr. Keenan: And you won't agree to the other?

Mr. Shannon: No comment.

Mr. Langdon: I have only a few questions.

Cross examination (Continued).

By Mr. Langdon:

Q. Mr. Cole, turn to your Appendix B, please.

That, along with Appendix A, includes your special terminal cost study, of course.

That is correct, is it not, the total showing of costs there?

A. The terminal study costs are incorporated in Columns 5 and 7, along with the costs that were found in JLH-1 and 2.

Q. Now, limiting your answer to your special terminal cost study, what rate of return on investment did you include in Column 5?

[fol. 1867] A. I used six per cent.

Q. Now, turning to Column 7, and limiting your answer to your special terminal cost study, how did you make the transition from total cost to out-of-pocket cost?

A. I took 80 per cent of operating expenses, rents and taxes, and on the return on investment I used 50 per cent road and a hundred per cent on equipment.

Q. One other question: You said that at New York the

New Haven was a minor factor in the handling of export-import traffic, during the course of your cross examination.

A. Relatively. Our share of the tonnage, that percentage is low.

Q. Are you a major factor at Boston in the handling of the same traffic there at that point?

A. I have never seen total figures for Boston. I don't know what our percentage is.

Q. Would you regard the Boston and Maine as a larger carrier at Boston in the handling of export-import traffic.

Mr. Keenan: Mr. Examiner, again will Counsel tell me what, on direct examination, this has anything to do with? The witness has not been tendered as competent concerning the Boston and Maine's traffic volume.

Exam. Boat: I think that question is a fair question, if he has any knowledge.

The Witness: I haven't seen any tonnage figures, export-[fol. 1868] import tonnage figures for the Boston and Maine.

By Mr. Langdon:

Q. You have no general knowledge of their standing vis a vis the New Haven in the handling of this general type of traffic, roughly?

A. No. I have never had occasion to see any of their figures.

Q. How about the Boston and Albany?

A. I wouldn't know on them, either.

Q. They handle export-import traffic at Boston?

A. Yes, I think they do. I am not familiar with their facilities or the quantity they handle.

Mr. Colgren: I have a question, if you please.

Redirect examination.

By Mr. Colgren:

Q. Mr. Cole, with reference to your most recent answers here concerning Appendix B to Exhibit 110; in the computation of your out-of-pocket cost, Column 7, you indicated,

I believe, that you used 80 per cent of the various accounts that went in to make up your total costs, Column 5? Is that right?

A. I used 80 per cent of operating, and for my terminal study I used 80 per cent of operating expenses, rents and taxes, and I used, as I said before, 50 per cent return in the case of the road and 100 per cent in the case of equipment. On the other costs, the Heywood costs, I used the straight 80 per cent. That is, the line haul cost and the [fol. 1869] inland terminal cost.

Q. Yes. The 80 per cent is the standard short method of converting fully distributed costs to out-of-pocket costs?

A. It is a commonly used method.

Q. Are you familiar with Witness French's testimony in this proceeding?

A. I have read it.

Q. Do you disagree with his use of specific per cents in ascertaining out-of-pocket costs in connection with a special port study from accounts used in the original Heywood study?

A. I see nothing wrong with doing it account by account.

Q. One other question, Mr. Cole: Has the New Haven ever received six per cent return on its investment in recent years?

A. Not in a good many years.

Mr. Colgren: Thank you very much.

Exam. Boat: Redirect?

Mr. Keenan: One question.

Redirect examination (Continued).

By Mr. Keenan:

Q. Mr. Cole, lest there be any misunderstanding about it, please tell me, with regard to the costs of the southern tier railroads what you did? Did you attempt to produce, yourself, the terminal costs of the southern tier railroads, or did you simply make these of costs which had been produced for those railroads by their own cost men?

A. I simply analyzed their costs and lifted out what I [fol. 1870] understood to be what they showed as the port terminal cost, accepted it as shown.

Q. Did you make any attempt to determine whether the work that those southern tier cost witnesses had done was accurate, or not?

A. I made no such attempt.

Q. Have you any opinion as to whether their work is accurate, or not, or as to whether their costs are accurate, or not?

A. No, I have no—I just accepted them.

Q. You have what?

A. I just accepted them for the purpose of this case, what they contend to be their costs.

Q. And have you any opinion as to the accuracy of their costs?

A. I would say, on the basis they are put up, they are reasonable. I have no reason—I am not quarreling with them.

Mr. Keenan: No further questions.

Exam. Boat: That seems to be all, and thank you, Mr. Cole. You are excused.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Keenan: May I tender for receipt in evidence Exhibit 110, Mr. Examiner?

Exam. Boat: Exhibit 110 is received.

(Respondents' Exhibit No. 110, Witness Cole, was re-
[fol. 1871] ceived in evidence.)

Mr. Keenan: Mr. Examiner, Mr. Shannon asked for a stipulation on a late-filed exhibit. I will be glad to transact that business now, if the Examiner cares, while we have it fresh in mind.

Exam. Boat: Perhaps it should be done.

Mr. Keenan: We can do it very briefly.

Do you want to file a late-filed exhibit, Mr. Shannon?

Mr. Colgren: Isn't that part, sir, as you mentioned, part of this general subject for further hearing?

Exam. Boat: I think we might discuss that also.

Mr. Keenan: Is the request being withdrawn? If there

is such a request, I would like to stipulate that he might file a late-filed exhibit, Mr. Examiner, so long as we know what it is going to be.

Exam. Boat: Well, it is a matter similar to other matters that we are going to consider here, and I think the proper time to discuss it is at that time.

The next witness?

Mr. Myskowski: Mr. Examiner, I believe Mr. Macleay and Mr. Moerman and the representative of the Census Bureau are conferring in another room with respect to the underlying figures. I don't think it would serve much purpose to put Mr. Laux back on the stand. I could go over and see if they are ready for further cross examination.

[fol. 1872] Exam. Boat: Off the record, please.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Scully: I offer for identification the verified statement on behalf of the Associated Industries of Maine, to be marked for identification.

Exam. Boat: It may be identified as Exhibit 111.

(Respondents' Exhibit No. 111, Witness Havey, was marked for identification.)

Mr. Scully: And I also offer for identification a statement in behalf of the Maine State Chamber of Commerce.

Exam. Boat: That may be identified as Exhibit 112.

(Respondents' Exhibit No. 112, Witness Emerson, was marked for identification.)

Exam. Boat: There will be no objection? There has been no request for cross examination?

Mr. Scully: I know of no request.

Mr. Keenan: Can I get Mr. Bleakney from across the hall?

I don't know whether he would have an objection to this. He has an interest in it. It will just take me one minute.

Exam. Boat: Very well.

Mr. Keenan: Mr. Examiner, thank you.

Exam. Boat: No one wishes to cross examine as to these statements. Under the circumstances, they are received in evidence.

[fol. 1873] (Respondents' Exhibit No. 111, Witness Havey, and No. 112, Witness Emerson, were received in evidence.)

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

EDWARD K. LAUX was recalled and testified as follows:

Cross examination (Continued).

By Mr. Macleay:

Q. Mr. Laux, referring to your Exhibit A-2, can you tell me how many of the vessels indicated thereon as having transported general cargo are vessels of less than 1,000 gross tons?

A. No, sir. I do not have that information.

Q. Is that information available in your underlying data?

A. I am not certain whether it is, or not. I assume—

Mr. Moerman: I am informed that it is, Mr. Macleay.

Mr. Macleay: Are you also informed as to the number of such vessels?

Mr. Moerman: Mr. Gilbert estimates 25, Mr. Macleay.

Mr. Gilbert: That is on the high side.

Mr. Macleay: Thank you.

Mr. Moerman: That information, Mr. Macleay, I am informed, is in the underlying data which you have before you.

Mr. Macleay: Thank you.

[fol. 1874] By Mr. Macleay:

Q. Mr. Laux, I hand you a copy of Witness Hamill's WSH-1, and refer you to page 6 thereof, and at the same time refer you to page 4 of 21, as it is designated, or page 3 as it is shown in the center of the page, of your Exhibit A-2.

In both instances, the vessel Tallyrand, your Exhibit A-2 indicates that Tallyrand clearing Baltimore on July 1 with general cargo.

I ask you if page 6 of Witness Hamill's Exhibit WSH-1 does not also indicate the Tallyrand as having cleared Baltimore on July 1?

A. Where did you say it was shown in my Exhibit A-2?

Exam. Boat: Yes. I am having difficulty finding it.

Mr. Macleay: It is the Page No. 3 in the middle of the page. Up above it is called Page 4 of 21. It is the third from the last vessel shown on that page.

The Witness: What is the page on the upper right-hand corner?

Mr. Macleay: Page 4 of 21 at the top. In the center of the page, it is called page 3.

The Witness: Yes. My exhibit shows clearance date July 1, and so does Mr. Hamill's exhibit, the same date.

Mr. Moerman: We have checked it here, Mr. Macleay. It should not have been included. It was included by error. That will be clearly conceded.

[fol. 1875] Mr. Macleay: Mr. Examiner, that is a type of error which we have found in some instances in our examination of Mr. Laux' Exhibit A-2. Another type of error which we have found is—just a moment, let me find a good example of it.

The Witness: I might observe right here that the ship is spelled T-a-l-l-e-y-r-a-n-d on Mr. Hamill's exhibit, and on my exhibit it is spelled T-a-l-l-y-r-a-n-d. It is quite possible that the clerk who made the check or compilation of this study thought it was two different ships.

Mr. Macleay: That is quite possible.

I will state for the record, Mr. Examiner, that we have also found that, in some instances, vessels which are indicated on Mr. Laux' as having called at Baltimore in general cargo service did so call at Baltimore, and through similar clerical errors of one sort or another, were omitted from the Hamill exhibit, or were misrecorded.

By Mr. Macleay:

Q. As an example, Mr. Laux, will you please turn to page 17 of Witness Hamill's exhibit.

You show in your Exhibit A-2, on page 5, the Alcoa Roamer as having entered Baltimore and cleared Baltimore on August 16th.

You will note on page 17 of Witness Hamill's exhibit that the Alcoa Roamer is listed.

Do you find that, about the middle of the page?

A. I see the Alcoa Roamer.

[fol. 1876] Q. Now, you will note that she is listed as having called at Boston on July 17th, and New York on July 22, at Baltimore on July 19th. You will note that she is also recorded as having called at Boston on August 13, New York August 18, and at Philadelphia on August 16th.

We find that the notation of the call at Philadelphia is in error and that that should have been recorded as a call at Baltimore.

A. In other words, we are correct.

Q. You are correct.

Now, Mr. Laux, referring to the movement which you show for a vessel named Spigeborg on August 19, which I find on another page marked in the center "3" of your Exhibit A-2, and marked Page 7 of 21 in the upper corner.

Exam. Boat: I think we had better use the latter numbers to identify it, please.

Mr. Macleay: All right. Page 7.

By Mr. Macleay:

Q. Do you see the Spigeborg?

A. I do.

Q. You have her recorded as having entered Baltimore and cleared Baltimore on August 19, entering in ballast and clearing in general cargo.

Is that correct?

A. That is correct.

Q. Referring to your underlying data, I note that she is [fol. 1877] listed in the Census report as having cleared on that date with a No. 3 designation as cargo.

That is the general cargo designation, is it not, or a general cargo designation?

A. I couldn't say. I am not familiar with these numbers.

Mr. Macleay: May I ask if the man who is familiar with them can advise us at this point if that is correct?

Mr. Gilbert: Yes.

By Mr. Macleay:

Q. Now, referring to page 8 of your exhibit, the vessel named Green Harbour, you indicate that as clearing Baltimore on the 16th of August with general cargo, do you not?

A. Yes, sir.

Q. Referring to your underlying data, the Census list, I call your attention to the notation of the Green Harbour as having cleared Baltimore on that date. Her cargo designation is No. 5.

Mr. Macleay: Do you know what is No. 5 in the cargo designation?

Mr. Gilbert: No. 5?

Mr. Macleay: May I ask the man who does?

Mr. Gilbert: Do you want me to agree with you, do you mean?

Mr. Macleay: I am merely asking what it is.

Mr. Gilbert: That is bulk cargo.

[fol. 1878] By Mr. Macleay:

Q. Would that indicate to you, Mr. Laux, that there is an error in the tabulation of your exhibit, or the recording in your exhibit when you show that vessel as having gone out in general cargo?

A. It is an error, not a serious one when we checked 1400 ships.

Q. I am not saying it is serious, and I am not accusing you of anything venal, Mr. Laux.

A. I am glad you are not.

Exam. Boat: Well now, all of this, how important, how significant are these instances that you point out? Are they going to invalidate all of this sort of showing, or what?

Mr. Macleay: Mr. Examiner, I don't know that—

Exam. Boat: I just asked the question because of the time we seem to be consuming.

Mr. Macleay: I agree with the Examiner completely, and I think this is an appropriate time for us to reach final agreement, if we can, on what we tentatively agreed to yesterday, which is that this whole subject should be handled by a late-filed exhibit which we are prepared to try to work up initially and submit to Mr. Moerman in the hope that we can reach an accord on these matters; point out the errors which Mr. Laux' exhibit indicates were made in Mr. Hamill's exhibit, point out the errors which are to be found in Mr. Laux' exhibit, and where there is an unreconcilable difference, merely so state.

[fol. 1879] If that is satisfactory with counsel, and if we may agree that we will follow that procedure, I can suspend with this particular line of cross examination.

Mr. Moerman: Mr. Macleay I believe misspoke himself. He mentioned Mr. Laux twice. Did you not intend to say, point out errors in Mr. Hamill's exhibit?

Mr. Macleay: I meant to say Mr. Hamill. If I said "Laux" twice, would you please correct the record?

Mr. Moerman: With that understanding, Mr. Examiner, of course we are in accord, with your permission, that that may be done. As I understand it, we will get together on an exhibit which will endeavor to correct such errors as may be found in the two sets of exhibits and file them as a late-filed exhibit.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Macleay: Also, I wonder if counsel will agree that this exhibit may indicate such other material from the underlying data on both sides, so far as that goes, as may be of particular interest so far as Baltimore carryings are concerned. I have in mind particularly the matter of vessels of less than 1,000 tons carrying capacity, as indicated on your underlying data.

[fol. 1880] Mr. Moerman: Agreed.

By Mr. Macleay:

Q. Mr. Laux, referring to your Exhibit A-6, you state that you excluded from that count vessels of less than 1500 tons carrying capacity.

Is that correct?

A. That is correct.

Q. Can you tell me how many such exclusions there were so far as New York is concerned, and can you break it into exclusions of vessels of less than a thousand tons and vessels of between 1,000 and 1500?

A. No, I cannot.

Mr. Moerman: I am informed, Mr. Macleay, that that can be computed also from the basic data which we have furnished you.

By Mr. Macleay:

Q. I find, Mr. Laux, a notation on the basic data having to do with New York for 1956, a notation of, "Vessels under 1,000 tons, 248," and, "Vessels between 1,000 and 1500 tons, 595."

Can you advise me whether that is the respective number of vessels excluded in each category from your count for the purposes of Exhibit A-6?

A. I would have to depend on Mr. Gilbert.

Mr. Macleay: I wonder if Mr. Gilbert can advise me.

Mr. Gilbert: Yes, that is correct.

By Mr. Macleay:

Q. Now, during the same year, 1956, at Baltimore, our count which we made when we found that there was no [fol. 1881] similar tabulation indicated at the head of the document, was that 40 vessels of less than 1,000 tons had been excluded and 383 vessels of between 1,000 and 1500 tons had been excluded.

Can you advise me whether those figures are correct?

Mr. Gilbert: Our count is not far apart. For your 40 we have 38. For your 383, we have 389.

Mr. Macleay: Off the record?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

By Mr. Macleay:

Q. Now, you also state, Mr. Laux, that you excluded from the count passenger vessels.

Is that true?

A. That is correct.

Q. Do you mean to include there what are commonly known as combination vessels, in other words, vessels carrying some passengers and also carrying considerable quantities of freight?

A. When we refer to passenger ships, we are referring to those vessels that carry more than 12 passengers.

Q. Can you tell me how many such vessels were excluded from the count at New York during the year 1956?

A. No, sir.

Q. Will you agree that there was excluded the America, with 16 sailings?

[fol. 1882] A. If the America had 16 sailings, that was excluded.

Q. Do you know whether or not the America had 16 sailings?

A. In '56?

Q. Yes, sir.

A. No, sir.

Q. Did you make these computations, Mr. Laux?

A. Do you mean in this exhibit?

Q. Yes.

A. Well, they were prepared under my direction. I didn't make them. I didn't even examine the work sheets. I requested that we have data to show that Baltimore ship sailings have been augmented since 1951. That is the whole purpose.

Q. So you directed the exclusion of all passenger vessels? Is that correct?

A. Yes, sir. We excluded those because they do not carry much freight and—

Q. Just answer my question, please, Mr. Witness. Let's don't get into an argument.

Mr. Moerman: Well, are you not interested in the reason for the exclusion, which, I take it, will not be argument?

Mr. Macleay: I am quite certain he stated his reason and his feelings about passenger vessels yesterday. It is also stated in his direct. I don't have to agree with him. I don't think it has to be restated at this point.

By Mr. Macleay:

Q. Among the vessels excluded, I assume, were the Grace [fol. 1883] Line vessels which carry about 52 passengers?

A. If they sailed in '56, they were excluded.

Q. All right.

Now, in particular, I will refer you to your underlying data for New York.

I ask you to look at the underlying data from which you took the New York clearances for 1956, and ask if you excluded a vessel named the Santa Clara?

A. We did.

Q. A vessel of 5891 tons? Is that correct?

A. I don't know what the "5891" means. I have no definition of the numbers.

Q. Well, now, I refer you to the underlying data from which you computed the Baltimore sailings during the same period, and ask you if you will examine that and tell me whether or not you excluded the Santa Clara.

A. It was not excluded.

Q. In other words, you left that vessel in on her sailings at Baltimore, although you excluded that vessel from her sailings at New York? Is that correct?

A. Apparently.

Q. I ask you if that is also true as to the sailings of a vessel named the Santa Monica?

A. I wouldn't know, sir. Like I said before—

Q. Will you examine your underlying data and advise [fol. 1884] me, please?

A. I don't know where the underlying data is.

Q. Right here.

A. I know nothing about those numbers, and I am not going to look at them. If Mr. Gilbert wants to do it, it is all right.

Q. Did you instruct Mr. Gilbert to leave in the passenger vessels serving Baltimore, although excluding them at New York?

Mr. Gilbert: Please—

Mr. Macleay: Just a moment. I have a question pending.

Mr. Moerman: He thought you were addressing it to him.

The Witness: As a matter of fact, I wasn't aware that there was much passenger service from Baltimore, and, frankly, didn't give that a thought. I knew we had plenty of passenger service from New York, and, therefore, I requested New York passenger service be excluded.

By Mr. Macleay:

Q. What were your instructions on the matter, Mr. Laux?

A. What?

Q. Did you give you any specific instructions on the matter?

A. No, sir.

Q. That was not a part of the preparation over which you took direct direction?

A. Well, it may be an innocent misunderstanding on the part that did the abstracting.

[fol. 1885] Mr. Moerman: Mr. Macleay, just a minute. Are we talking about A-6 or A-4?

The Witness: A-6.

Mr. Moerman: Now, is the line of your questioning in connection with A-6 that the Santa Clara was omitted from the computations with respect to New York, and included in the Baltimore computations?

The Witness: That's right.

Mr. Macleay: Yes, sir. That is the exact tenor of my examination.

By Mr. Macleay:

Q. I refer you again to your underlying data for New York for that period and ask you if there is scratched out and excluded therefrom the sailings of a vessel named the Santa Monica?

A. Yes.

Q. And can you tell me how many sailings the Santa Monica made from New York?

A. No, sir.

Q. Will you agree with me that she made 17 sailings from New York during that year which you eliminated, or would you prefer to take a moment to count them?

A. I wouldn't prefer to do anything.

Q. Then I ask you to count them, please, sir, from your underlying data and tell me how many sailings she made to New York during the period.

[fol. 1886] Mr. Moerman: Don't make him work, Mr. Macleay. Ask him if there were 17.

Mr. Macleay: I did ask him that and he refused to answer, Counsel.

Mr. Moerman: Then it will just have to stand that way. You can't twist his arm.

Mr. Macleay: I can ask him to refer to his underlying data and tell me.

Mr. Moerman: He can be a little bit obstinate about it, too.

Mr. Laux, would you look at the data, please?

Mr. Macleay: I have to handle it rather delicately because I find it comes apart, these perforated sheets.

The Witness: Seventeen, correct.

By Mr. Macleay:

Q. Now I refer you to your underlying data covering the same period on sailings from Baltimore and ask you if the Santa Monica appears there.

A. It does.

Q. And will you tell me how many sailings she made from Baltimore during that period?

A. There appears to be ten.

Q. So you left in ten Baltimore sailings of the Santa Monica while you excluded 17 New York sailings? Is that correct?

A. Apparently.

Q. Now, will you refer back to your New York sailings, [fol. 1887] and a vessel named the Santa Sofia, she was scratched out and was eliminated from your New York computation, was she not?

A. Yes, sir.

Q. And how many sailings did she make from New York? Will you agree with me that she made 17 during that period?

A. Yes, sir.

Q. Now, referring to your similar underlying data for the Port of Baltimore during that period, I ask you if that vessel is shown as having sailed from Baltimore?

A. It is shown.

Q. And how many sailings did she make from Baltimore?

A. Eight.

Q. So you left in the eight Baltimore sailings of the Santa Sofia while eliminating the 17 New York sailings? Is that correct?

A. That is correct.

Mr. Macleay: May I inquire of Counsel if he will agree that I may read into the record our count of sailings of passenger vessels eliminated from the New York computation, in order to save the time of having Mr. Laux count them off for the record?

Mr. Moerman: How many are there?

Mr. Macleay: A couple of pages of them.

Mr. Moerman: Why don't you put them in an exhibit to follow along with the material?

Mr. Macleay: Is it agreed that we can file that as a [fol. 1888] late-filed exhibit, Mr. Examiner?

Exam. Boat: That will be all right.

(The document described to be furnished by protestants.)

Mr. Macleay: May we include the tonnage?

Mr. Moerman: That is all right.

By Mr. Macleay:

Q. Now, Mr. Laux, as I understand it, you also eliminated from these computations in your Exhibit A-6 those instances where vessels had made two calls at the port as a part of the same itinerary.

Is that correct?

A. That is correct.

Q. What criteria did you use to determine that fact? In other words, what juxtaposition of dates of sailings, or something of the sort, was set up as your rule of thumb?

A. Well, we find a vessel come in and discharge cargo—

Q. I understand that, Mr. Laux. I think the record is clear on it. All that I am asking is, for example, if the vessel shows up at the same port within a week, I would assume that you would eliminate one of those sailings from your count.

A. Not exactly. It depends on whether—

Q. How did you determine as to what was to be eliminated and what was to be left in?

A. As I said before, when a ship comes in and discharges cargo and then sailed without cargo, that sailing is elimi- [fol. 1889] nated. Later on she may come back and load cargo. But then the sailing is credited, but not the inbound, because she didn't unload.

Q. Well, it is true, isn't it, Mr. Laux, that vessels do sometimes make two runs, sometimes three calls at a port as a part of one itinerary, and I believe you will recall that Witness Hamill testified that, in his count of his sailings, he also had eliminated such double calls, did he not?

A. Yes, that's right.

Q. And you have eliminated them also from your count, haven't you?

A. Yes, that's right.

Q. All I was trying to get at was what proximity of date did you use. However, can you give me any idea of how many such double calls there were eliminated at the Port of New York?

A. No, sir.

Q. Can you give me any indication of how many such double calls there were eliminated at the Port of Baltimore?

A. No, sir.

Q. Will you refer to your underlying data?

Exam. Boat: Would this be a good place to stop, Mr. Macleay?

Mr. Macleay: Fine, sir.

Exam. Boat: We will take a ten-minute recess.

(Short recess.)

Exam. Boat: Come to order.

[fol. 1890] By Mr. Macleay:

Q. Mr. Laux, I omitted asking you to count the number of sailings of the Santa Clara from Baltimore during 1956. I show you your underlying data and ask if you will agree with me that she made eight sailings during that period?

A. I do.

Q. Now, on this matter of exclusion of double sailings, as an example, I point to the underlying data covering the New York sailings, the vessel African Glen. She sailed New York 7-10 and again sailed New York 7-31, so you have eliminated the sailing on 7-10.

It wouldn't have mattered which one you eliminated. You just eliminated duplication, is that correct?

A. That is correct.

Q. So those are obviously on the same itinerary, are they not?

A. I would imagine so.

Q. Now, referring to your similar underlying data for Baltimore during that period, the vessel African Glen, she is indicated as having sailed from Baltimore on 7-21 and having again sailed from Baltimore on 7-27.

Wouldn't you say that that is similarly obviously a part of the same itinerary?

A. It could very well be.

Q. Yet you have not eliminated either one of those Baltimore sailings have you?

[fol. 1891] A. No, sir.

Q. Did you eliminate any duplicate sailings from Baltimore?

A. I couldn't say, sir. I would have to ask Mr. Gilbert.

Q. Will you look at your underlying data and tell me whether or not you eliminated any duplicate sailings from Baltimore?

A. Apparently not.

Mr. Macleay: May we go off the record a moment, Mr. Examiner?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Macleay: I believe I can state our agreement for the record, which is that our late-filed exhibit that we agreed to some time ago covering the passenger sailings from New York during 1956 will show the similar information from the underlying data for 1951, and that we may have access to the data for the purpose of preparing also a tabulation which will be presented as a late-filed exhibit of the duplicate sailings at Baltimore during 1956 and 1951.

Mr. Moerman: All right.

Mr. Macleay: Also, if Counsel will permit, we will agree —I would like to, as long as we are going back to 1951, I would like to put in similar information regarding the passenger vessel sailings from Baltimore which I assume were not excluded, inasmuch as they were not excluded [fol. 1892] from the 1956 tabulations.

Mr. Gilbert: Do you have that basic data, Mr. Counsel, in our runs?

Mr. Macleay: I was just asking if Counsel will agree that I can put that in the record as part of a late-filed exhibit.

Mr. Moerman: Agreed.

Mr. Macleay: If I may have just a moment now to look at my notes, I think we are practically done.

By Mr. Macleay:

Q. In your study of Witness Hamill's Exhibit WSH-1, Mr. Laux, did you note that there were not included therein vessels of less than 1,000 tons carrying capacity?

A. I don't recall. I might have noticed at the time, but right now I don't recall.

Q. Your exclusion, however, for purposes of your exhibit A-6, was of vessels of less than 1500 tons? Is that correct?

A. That is correct.

Q. Although you included vessels of less than a thousand tons for purposes of your Exhibit A-2? Is that correct?

A. I think Exhibit A-2 includes all vessels.

Is that right, Mr. Gilbert, Exhibit A-2 includes all size vessels?

Mr. Gilbert: What it was, in A-2 we were comparing Hamill's exhibit, so we developed a complete universe.

Mr. Jordan, was it 23 tons and over?

26 tons and over. In other words, we made no judgment [fol. 1893] at all. We took out the largest basket to compare against Hamill. That is what we had done for A-2 so we would have a basis for comparison. When we had done the larger study of '51 versus '56, at this time we were interested in a trend and we were interested in those ships that were carrying cargo which are involved in this case, and we had chose 1500 tons and so stipulated.

Mr. Macleay: Mr. Examiner, I move that that be stricken from the record. That is not responsive to the question. We are reaching a point of argument when this witness starts talking about cargo involved in this case.

Exam. Boat: Well, I think—

Mr. Moerman: Mr. Examiner, it is just a statement of what was done and why it was done.

Mr. Macleay: If you will confine it to a statement of what was done, of course, I have no objection, but when he starts trying to argue the case, I think that is going a little too far. All I asked him was a simple explanation whether they were in or out.

Exam. Boat: I think his statement was explanatory of what was done.

Mr. Moerman: A-2 again, and A-6, small ships of less than 1500 net registered tons were eliminated from both Baltimore and New York.

By Mr. Macleay:

Q. But again, for purposes of your A-2, you included [fol. 1894] vessels of less than a thousand gross tons? That is correct, is it not, Mr. Moerman?

Mr. Moerman: That is correct.

Mr. Macleay: I will address this question to Mr. Gilbert.

Did you make any check, or did you check his testimony or check anything to determine whether Witness Hamill's exhibit included any vessels of less than a thousand gross tons?

Mr. Gilbert: We made a spot check, and I could see none less than a thousand.

Mr. Macleay: None less than a thousand in Witness Hamill's, but you did include them in your tabulation?

Mr. Gilbert: We were looking for a complete universe.

By Mr. Macleay:

Q. Now, Mr. Laux, you made this statement in your Note 3 to your Exhibit A-6, that while vessels of less than 1500 net tons represent over 10 per cent of the clearances, they represent less than 1½ per cent of the cargo carrying capacity.

Do you have the material from which you prepared that statement?

A. No, sir, I do not.

Q. Did you make that computation?

A. No, sir.

Q. Do you know whether that statement is intended to apply to the situation at both New York and Baltimore, or only at New York?

[fol. 1895] A. I do not know whether it covers both, or not.

Mr. Macleay: I wonder if Mr. Gilbert could answer that question.

Mr. Gilbert: It includes both.

Mr. Macleay: Can you give me the figures from which you made the computation that vessels of that size represent over 10 per cent of the clearances from Baltimore?

Mr. Gilbert: I don't have the basic papers with me. If you wish, I will get them.

Mr. Macleay: What sort of figures did you use?

Mr. Gilbert: You have all the documentation in front of you, Counsel.

Mr. Moerman: Mr. Examiner, Mr. Gilbert wants to make a correction in his statement.

Mr. Macleay: I thought he would.

Mr. Gilbert: The ten per cent of the shipments to the 1½ represent for New York and Baltimore the total activity of both of them.

Mr. Macleay: Oh, you lumped them together?

Mr. Gilbert: That is right, yes.

Mr. Macleay: Can you state what the per cent is for the Port of New York?

Mr. Gilbert: We made some computations earlier.

Mr. Macleay: Can you state that at this time?

Mr. Gilbert: For New York it was 843, for Baltimore it [fol. 1896] was 427. As a matter of fact, I am looking here now. 427 and 4,000, it runs approximately 10 per cent.

Exam. Boat: That is the number of vessels?

Mr. Gilbert: Yes.

Mr. Macleay: Well, that is 427 related to a total of 4451? Is that correct?

You might come here and look at this data and you might agree with me.

Mr. Gilbert: I am very suspicious of doing computations on my feet.

Well, let's say it is 4,000.

Mr. Macleay: No. Let's say it is 4451. That is what the figure shows on your document here, isn't it?

Mr. Gilbert: Mr. Examiner, yesterday we were arguing about green marks and I refused to answer. I have gone through and I have verified what those green marks were, which he wanted to know. Each of those green marks referred in three cases to three specific different things.

Mr. Macleay: We are not talking about green marks.

Mr. Gilbert: You are referring to notations. If you want, I will go through the whole thing.

Mr. Macleay: I am not referring to a notation. I am referring to a total which is printed at the bottom of the listing of sailings from Baltimore during 1956 and the printed figure at the bottom, which is, apparently, a total, is 4451.

[fol. 1897] Mr. Gilbert: If you will put this in the record and say it is apparently a total, then we will verify it.

Mr. Macleay: I have just put it on the record.

Mr. Gilbert: I have no objection to that statement.

Mr. Macleay: Now, referring to Exhibit No. A-6, your Baltimore total is there shown as 4025, is it not?

Mr. Gilbert: Go ahead.

Mr. Macleay: Is that correct?

Mr. Gilbert: Go ahead.

Mr. Macleay: Is that correct?

Mr. Gilbert: Yes.

Mr. Macleay: What was the total number of your exclusions from Baltimore?

Mr. Gilbert: I would have to go back to my basic documents.

Mr. Macleay: You just gave us the figure, I thought, a moment ago.

Mr. Gilbert: If you have it, let's work it out.

Mr. Macleay: I don't have it.

Mr. Gilbert: You will recall your figure was different from mine, Counsel. We are arguing about different things. Make it 4,000, make it 4400, it won't change the trends.

Mr. Macleay: I am not arguing the matter. All I want is just a direct answer to the direct question. Now, was the total sailings indicated on your underlying data for Baltimore 4451?

[fol. 1898] Mr. Gilbert: Apparently it is so. I would like to verify it.

Mr. Macleay: And we would relate to that your figure of 427 as being the so-called small vessel clearances? Is that correct, in order to obtain a percentage?

Mr. Gilbert: Yes.

Mr. Macleay: And for New York we would relate to a total shown on your underlying data of 7,964, your figure of 843 for small vessels? Is that correct?

Mr. Gilbert: These are your relations, these aren't mine.

Mr. Macleay: Well, isn't that how you arrived at the percentage figure?

Mr. Gilbert: If you want, I will go through and review the entire procedure. I do not have the work papers. This is the same technical argument that we had yesterday. Any questions you have, we supplied all the data you want, you can verify anything you want.

Mr. Macleay: I am only asking you to tell me if that would be the proper procedure in order to determine a percentage relationship of the small vessels to the total sailings.

Mr. Gilbert: It might be one, but I would like to check my work papers.

Mr. Macleay: Can you tell me another way?

Mr. Gilbert: There is only one, and that is the way we worked in the exhibit.

[fol. 1899] Mr. Macleay: There is no method shown in the exhibit.

Mr. Gilbert: And that is why I want to get my basic work papers.

Mr. Moerman: All right, Mr. Macleay, for the present purposes and for the purpose of expediting the hearing, I will accept, on behalf of my clients, the method outlined by you.

Mr. Macleay: Thank you, sir.

Now can you tell me the basic figures which you used to arrive at this carrying capacity percentage?

Mr. Gilbert: Those are the figures which are obtained from the basic papers that you have before you. They are listed by the Department of Commerce and you will find the proper heading for them in all of them.

Mr. Macleay: Was this 1½ per cent obtained also by a lumping of the total carrying capacities indicated for Baltimore and New York, or was it done individually for either or both ports?

Mr. Gilbert: Basically a combination process of vessel activity.

Mr. Macleay: I see.

And were there included in the computations, when figuring the total carrying capacity at Baltimore, the double sailings which were not eliminated from your computation which we discussed a few moments ago?

Mr. Gilbert: If there were no double sailings omitted, [fol. 1900] they would still be there.

Mr. Macleay: Pardon me?

Mr. Gilbert: If there were no double sailings eliminated, they would still be in there.

Mr. Macleay: In other words, if it is not indicated on your underlying data that that sailing was scratched out, that tonnage would have been included?

Mr. Gilbert: This is not tonnage. This is the net register.

Mr. Macleay: That's right. That is what I am talking about, tonnage.

Mr. Gilbert: This isn't cargo.

Mr. Macleay: I know. It is tonnage, it is carrying capacity. Isn't that right?

Mr. Gilbert: Right.

Mr. Macleay: Lifting capacity, I believe they call it sometimes.

Mr. Gilbert: No.

Mr. Macleay: It was figured on the basis of the vessel net registered tonnage.

Mr. Gilbert: We would be happy to explain why we chose that base also, if you wish.

Mr. Macleay: I imagine you chose it because it was readily available.

Mr. Gilbert: No. Because, one, this is an area in which there is no precision. Let me explain what we are talking [fol. 1901] about. You have a vessel which is moving in trade and it has a net registered tons. Now, the question comes, what is the capacity of cargo that those ships will carry?

Now, there are real problems in documenting. We know, and I think you know, at the Port of Baltimore, for example, if we had taken some of your ships—if you want, this will be off the record—some of your ships, when you carry ore, are heavy density. You take the Bonny Hills, which is one that has moved out, and you take the Omar, the registered tonnage is 10,000 tons, which are indicated there, which is all we used, are actually carrying 40,000 tons of ore. This is a problem of what actually goes into a ship, which is qualitative more than the actual number count. What is the actual capacity in terms of the cargo moving beyond any port?

Now, if you tie together pieces, if you recall, Mr. Laux has already pointed out that in New York the number of vessels has increased, the actual tonnage per vessel has

actually declined. What I am speaking now, when you take this net registered ton and couple it with the actual tonnage moving from a port, this is; I feel, more realistic, and we took the most conservative possible.

Mr. Macleay: Now may I address a question to Counsel?

Mr. Gilbert: Yes.

Mr. Macleay: Apparently it is going to be desirable for us to make this computation. The witnesses have in- [fol. 1902] cluded in their computation for Baltimore double sailings, duplicate sailings. I think that those should be eliminated. I think that we should have an opportunity to demonstrate what are the results by such elimination.

Mr. Moerman: No objection.

Mr. Macleay: If I may include that in my late-filed exhibit.

Exam. Boat: If it is agreeable.

Mr. Moerman: Of course, for both years.

Mr. Macleay: Both years and both ports.

Mr. Moerman: Yes.

By Mr. Macleay:

Q. Did you check, yourself, Mr. Laux, the vessels that were eliminated as being less than 1500 gross tons?

A. I have not.

Q. Do you know how many of them were, or are, as you stated, fishing vessels?

A. No, I do not.

Q. Do you know if any of them are fishing vessels?

A. No, I do not.

Mr. Moerman: Mr. Gilbert made the statement, Mr. Macleay.

Mr. Macleay: So did Mr. Laux in his direct testimony.

Mr. Gilbert: We had run a spot check under a thousand tons for New York.

Mr. Macleay: I am speaking now of vessels between [fol. 1903] 1,000 and 1500 gross tons.

Mr. Gilbert: I can answer with the same accuracy.

Mr. Macleay: Can either of the witnesses indicate any vessel shown in the underlying data for 1956 or for 1951 at either New York or Baltimore that is a fishing vessel?

Mr. Moerman: The answer is "No."

The Witness: Although I might say this, that I have seen these vessels arrive at Iceland and Greenland.

Mr. Gilbert: What you do have there in the thousand to fifteen hundred tons are tramp ships which generally are moving lumber and other such commodities.

Mr. Macleay: Now you are making a statement that is going to keep us here for a while, Mr. Gilbert.

Will you please point out here the ones that are in the tramp trade, as distinguished from any other trade?

Mr. Gilbert: There is no point. We are not here to take up the Examiner's time.

Mr. Moerman: That statement may be stricken.

Mr. Gilbert: I take it back.

Exam. Boat: Does that complete your examination?

Mr. Macleay: I will take one last look at my notes, if you please.

Thank you, Mr. Laux and Mr. Gilbert.

Redirect examination.

By Mr. Moerman:

Q. Mr. Laux, look at your Exhibit A-6, will you?

[fol. 1904] A. I have it.

Q. The Baltimore figure, '51 through '56, or '56 over '51, shows, according to your exhibit, increase in cargo vessel clearances at Baltimore of some 32.1 per cent. You give as your sources the U. S. Department of Commerce, Bureau of Census.

Have you, since the preparation of this exhibit, obtained from a Baltimore source information bearing on the accuracy of the 32.1 per cent figure?

A. Yes. We receive regularly the Port of Baltimore Bulletin, which I have before me now, dated May 1958.

Mr. Macleay: Objection, Mr. Examiner. I think that Counsel's objection yesterday when I attempted to put in later material from a bulletin of the Port of New York was sufficiently well taken that I withdrew the request, and I make the same objection now that he made then, that the figures we are talking about here are all of a

past period and that this sort of information is not germane.

Mr. Moerman: I will agree that if anything that Mr. Laux reads doesn't deal with the figure I am talking about, it can go out.

Mr. Macleay: Now, you are talking about the increase 1956 over '51?

Mr. Moerman: And I want to put into the record an [fol. 1905] admission by you that such an increase, or approximately such a figure has occurred.

Mr. Macleay: During those years?

Mr. Moerman: Well, it will bridge a year.

Mr. Macleay: Objection.

Mr. Moerman: It will be from '52 on.

Mr. Macleay: Objection. The same objection that he made yesterday. It does not relate to the same figures.

Mr. Moerman: Now, Mr. Examiner, the purpose of the cross examination was to impeach that figure. I will say, I will offer to show—let me have that—I'll make an offer of proof and then you can see whether it is objectionable.

Mr. Macleay: All right. Then I, too, will make an offer of proof for the material that I wanted to put in yesterday.

Mr. Moerman: His material is not germane to the direct.

"A study made by the Maryland Port Authority of traffic out of Baltimore during the six years, '52 through '57, shows an overall increase of 31 per cent in the number of ship arrivals at the Port, from 4640 in '52 to 6,089 in '57."

Now, I am quite willing—

Mr. Macleay: So am I. I withdraw my objection, Mr. Examiner.

Mr. Moerman: Then if no objection, it is taken that the statement is not made as an offer of proof but is on the record?

[fol. 1906] Mr. Macleay: I have withdrawn my objection.

Mr. Moerman: All right.

Exam. Boat: May it be considered in evidence?

Mr. Macleay: It may be considered in evidence.

Thank you, sir.

Mr. Moerman: I have no further redirect.

Exam. Boat: I don't think we have received Mr. Laux' statement.

Mr. Moerman: I offer the statement and the accompanying exhibits.

Exam. Boat: The statement may be received in evidence as Exhibit 107.

(Respondents' Exhibit No. 107, Witness Laux, was received in evidence.)

Exam. Boat: I believe that concludes the examination, Mr. Laux. You are excused.

(Witness excused.)

Mr. Colgren: It would appear that Mr. French is the next witness we offer.

Exam. Boat: All right.

WESLEY F. FRENCH was sworn and testified as follows:

Direct examination.

By Mr. Colgren:

Q. Mr. French, will you state your name and address for the record, please?

[fol. 1907] A. My name is Wesley F. French, and I am Manager of Rate Cost Studies and Statistics of the New York Central System, at 466 Lexington Avenue, New York, New York.

Q. You have prepared a verified statement with accompanying exhibits, labeled WFF-1 and WFF-2, for this proceeding?

A. I have.

Q. Mr. French, do you have certain corrections to be made to your verified statement?

A. Yes, sir. I would like to make a correction in the verified statement on page 14 beginning under Paragraph 3 or Item 3, the second sentence, which begins, "Pro-

testant lines' exhibit No. 51 (Exhibit MLM-2, pages 32 and 101)". The "101" should be "96".

Continuing with that sentence, in the line immediately below, there is stated a figure of 2,885,470 tons, which should be revised to read "2,318,644 tons."

Then if you will kindly turn to page 17, toward the bottom, the eighth line from the bottom ends with the word "total." After that word I should like to insert "import/export", so the line will read, "total import/export tonnage," beginning with the next line.

Also, on page 18, for clarification, I would like to add to the sentence ending on line 8, which ends with the words, "during the traffic study year," the words, "from differential territory."

[fol. 1908] Then if you will be so kind as to turn to page 19, at the top, on the sixth line down, before the figure of 66,393 tons, I should like to insert the words, "From differential territory," and so that it reads, "From differential territory 66,393 tons."

Toward the bottom of page 19, the seventh line from the bottom is stated, "an overall net credit of 43 cents." That should be revised to read "14" cents.

Page 20, the tenth line from the bottom presently reads, "B&O's export-import traffic at New York." Delete the words "export-import" and substitute the word "total."

In the following line, beginning, "September, 1956, was $58,612," delete the "$58,612" and substitute "$65,240."

The last correction is on page 23, on the fourth line from the bottom, on the right-hand side on that line it reads, "the revenues are $9.11 per ton." This should be corrected to read "$9.3" per ton.

Mr. Colgren: The witness is tendered for cross examination.

Cross examination.

By Mr. Langdon:

Q. Mr. French, you say that you are Manager of Rate Cost Studies and Statistics of the New York Central System.

Is that a separate department or section over which you preside?

A. It is a section.

[fol. 1909] Mr. Colgren: Excuse me, if you please. I am afraid I forgot to get this exhibit identified.

Exam. Boat: It wasn't identified.

Mr. Colgren: I am sorry, Mr. Langdon.

Exam. Boat: It may be identified as Exhibit 113.

(Respondents' Exhibit No. 113, Witness French, was marked for identification.)

Mr. Langdon: I assume we are following the practice—off the record?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

By Mr. Langdon:

Q. I will ask the same question, Mr. French: Referring to your Exhibit 113, you say in the first line, page 1, that you are manager of Rate Cost Studies and Statistics of the New York Central System.

I understand, from your answer, that that constitutes a section?

A. I think that would most nearly describe it rather than a department. It is a division of the accounting department.

Q. And you are the head of it?

A. That is correct.

Q. How many cost people do you have in that section, Mr. French?

A. Approximately ten cost people.

Q. And they are supported, I assume, by a number of [fol. 1910] clerical personnel?

A. That is correct.

Q. How many would they number, approximately?

A. About six or seven.

Q. And what is the function of this section over which you preside?

A. Well, this section has for its primary function to provide cost and cost controls for management, also to provide cost exhibits for various proceedings in which the company has an interest, to prepare the annual reports to the Interstate Commerce Commission and other regulatory bodies, and to the shareowners, to perform certain other duties that are assigned to it by the Comptroller or the Vice-President of Finance for management purposes.

Q. Does the traffic department refer to your section, for analysis, rates which they may have under consideration, analysis, that is, from the point of view of their compensatory character?

A. They will often refer rates which are in dispute or which we are attempting to establish for competitive reasons, or something of that kind, to us for application of our cost-finding procedures.

Q. And you then will advise them whether or not the rate which they have under consideration is compensatory, or not?

A. In the terms of those procedures, yes.

[fol. 1911] Q. Does the operating department of your company refer questions involving transportation costs to your section?

A. Not frequently. We have had a few referred to us, and not recently.

Q. During the course of the cross examination of Mr. Baylis, at the February 17th hearing, page 58, he indicated, I think, that your Operating Vice-President, Mr. John F. Nash, was conducting a series of studies of operating costs, including, if I read Mr. Baylis's testimony, a study of costs of the New York Central incurred at its terminal operations in New York.

Are you familiar with any such studies?

A. No, sir.

Q. You are not participating, assuming those studies are going on, as set forth in Mr. Baylis's testimony, you are not participating in those studies at all?

A. No, sir.

Q. Do you have any knowledge of them at all?

A. Only that there is a study which has been, I think, under way for some months with respect to the towing

operations in the harbor. Just what it comprises or what the basis of it is, or the format of it, I don't know. I have never seen the study.

Q. Who is conducting that study, Mr. French, for your company?

A. Well, I don't know. I would think it would have been assigned to the General Manager of the New York District, and he, no doubt, would delegate it to, possibly to the Gen-
[fol. 1912] eral Superintendent in charge of the terminal area. I would think that would be the procedure, but I don't know.

Q. When you say that you understand a study of towing costs is underway, what do you mean by the use of the word "towing"?

A. Well, that is a word that the operating department used to describe it when I heard it mentioned at a meeting one day. I don't know exactly what it comprehended. It merely referred to it as towing.

Q. You have no idea what was in mind then when they referred to a study of towing costs?

A. Well, I understand it was something to do possibly with the interchanging of marine equipment, that is to say, different railroads providing marine equipment for a pool operation, trying to work out some plan that would adequately cover that pool type of operation.

Q. Are you referring, Mr. French, to a study of New York Harbor marine operations conducted jointly, I think, by all of the railroads of New York during the year 1955?

Mr. Colgren: I think the witness has indicated that his information comes merely by a passing remark at a meeting.

Mr. Langdon: Well, I ask him, then, whether or not he is familiar with such a study of New York Harbor marine operations.

The Witness: No, sir.

By Mr. Langdon:

Q. In which your company participated?

A. No, sir. I had nothing to do with that study, and I
[fol. 1913] have never seen the study. I did not know what

period it covered, who made it, or what the intention was, other than this impression that I got from such conversation as I happened to overhear at this meeting some time ago.

Q. And you are unable to determine whether or not the Central has submitted costs for those marine operations to be considered by the other railroads in connection with the proposed plan to pool those operations at New York?

A. I have no knowledge what has been done with that study. As I say, I am merely aware of its existence, and it is called a towing study. I know no more about it than that.

Q. There are, then, other people apparently in the operating department of the New York Central who participate in cost studies and undertake to estimate costs for particular services.

Is that correct?

A. Oh, I imagine that is true.

Q. Mr. French, when did you receive the working papers for the cost studies, the original cost studies submitted by the Baltimore, Philadelphia, and Hampton Roads lines in this case? Was it last October, the end of October?

A. I don't recall exactly the date, nor do I know whether I have the letter of transmittal with me, but that might be a fair statement. It was in the late fall or middle fall.

Q. About eight months ago that would be, then, wouldn't it?

A. Yes.

[fol. 1914] Q. Since your receipt of those working papers, Mr. French, how much time have you devoted to their analysis and study?

Mr. Colgren: Mr. Examiner, may I inquire as to the purpose of this line of testimony? It certainly has nothing to do with the direct testimony and the exhibits in connection therewith.

Mr. Keenan: I share Mr. Colgren's curiosity, sir.

Mr. Langdon: I don't think I need, sir, to reveal the purpose of the question.

Mr. Keenan: Well, then I object to the question. In other words, I object to it on the basis of relevancy.

Mr. Langdon: It is perfectly relevant, Mr. Examiner, to know the approximate amount of time that was spent by the other side in reviewing the underlying papers that we submitted to support our cost showing.

Mr. Colgren: I think that is purely an academic matter of interest that you may have. I don't see its pertinency to the direct testimony of the witness. It is certainly beyond the scope of it.

Exam. Boat: If it is to determine his knowledge about it, I think that might be developed in some other way.

By Mr. Langdon:

Q. How many people in your section have been working on these underlying papers that we supplied last fall?

Mr. Colgren: Mr. Examiner, we have had a cost committee for the respondent railroads. These questions are not clear. The answers will not be clear. I don't see any purpose to them.

[fol. 1915] Mr. Langdon: We haven't heard the answers. I think it is relevant to know—

Exam. Boat: Well, I don't understand how this is very relevant to the matter we have before us. The witness has filed a statement here.

Mr. Langdon: I think, sir, that later on the relevancy of these questions will be connected up, and I am perfectly willing to have the answers now given subject to later connecting up.

Mr. Keenan: Well, can we have some clue as to how they are going to be connected up, Mr. Examiner? There is just no sign that there is any connection so far.

Mr. Colgren: It is certainly not relevant to this witness's testimony.

Exam. Boat: I think we ought to confine it to matters that are strictly within the scope of his direct.

Mr. Colgren: I don't quarrel with supplying this information if it can be shown to be something beyond pure curiosity, but I think we have an interest in proceeding with the case at this point, and certainly a witness who has before us a definite statement of fact, it should be inquired into.

Mr. Langdon: Mr. Examiner, these people have undertaken to restate, in part, our showing of costs, have had our underlying papers since late last October. I am curious, if you want to call it that, and I do think it would be relevant in the record to know how much time has actually [fol. 1916] gone into the production of this restatement of theirs.

Exam. Boat: Could that not be apparent from what has been presented by him here?

Mr. Langdon: Well, I don't think so, sir.

Exam. Boat: That is the matter we have before us right now.

Mr. Colgren: Mr. Examiner, perhaps Mr. French and his associates that worked on this data are geniuses and accomplished it in two or three hours, or perhaps they are lazy, indifferent workers that—and it took them six months to prepare it. It cannot have one iota of effect on what we have before us for cross examination.

Mr. Bongartz: It would be up to Mr. Langdon, Mr. Colgren to develop the ingenious qualities of Mr. French on redirect.

Exam. Boat: We have a statement here which has been presented in evidence. It is authentic, and it apparently speaks for itself. I think if you cross-examine on that, but I don't know that we have to go into all details, every moment of time that was required to prepare it for—

Mr. Langdon: Am I overruled on it.

Exam. Boat: I sustain the objection.

By Mr. Langdon:

Q Well, let me ask you this, Mr. French: Have you had a committee at work in connection with this restatement that is submitted as Exhibit 113?

A. Yes, sir. There was a cost committee in connection with it.

[fol. 1917] Q. Who composed that committee, Mr. French?

A. Representatives of the New Haven and Erie, the Lackawanna, the Port Authority.

Q. The Port Authority was in on this, was it?

A. That's right. The Lehigh Valley was a member but never attended. And the Central, the New York Central.

Q. With the exception of the Lehigh Valley, did each of those roads supply a cost man or men to the work of this committee?

A. We had several meetings and the attendance was reasonably regular, and we reviewed our procedures. But as to the actual work, the clerical work in carrying out the study, we undertook to do the entire job ourselves.

Q. Now, I take it it was not the responsibility of this committee, however, to deal with the Boston cost study as submitted by the New Haven?

A. We had nothing whatsoever to do with that. We didn't even know it was being made until it was in the advance stage.

Q. The New York Central is a Boston line, is it not?

A. I assume you could classify it so, yes.

Q. Was the New York Central asked to join in this Boston port cost study?

A. Not to my knowledge. I wasn't asked.

Q. Now, Mr. French, have you ever made a cost study of any kind bearing upon the marine operations at New York?

A. We made studies with respect to the ferry operations. [fol. 1918] That was on the passenger side, of course.

Q. Well, on the freight side, you made no such study?

A. No, sir.

Q. Was this experience since October in restating the Heywood exhibits your first experience with the costs of handling freight at New York Harbor?

A. Well, it was my first experience with the costs of handling freight at New York Harbor for the Baltimore and Ohio, the CNJ and Pennsylvania.

Q. Well, that is your first experience so far as the New York Central is concerned, is it not?

A. Well, we have never made a study of that type.

Q. Have you made a study of any type? Have you made a cost study?

A. I haven't made a cost study for New York Harbor, no.

Q. So that actually, then, this study that you made of Mr. Heywood's underlying work sheets was the first experience that you have had with the element of costs at New York Harbor for the handling of freight? Is that correct?

A. I didn't make any study of New York Harbor. I merely

took Mr. Heywood's study and made adjustments and restated it. There is no study here for the New York Central or any of the other New York Harbor lines other than those covered by Mr. Heywood.

Q. Well, let me rephrase my question, then: Was the [fol. 1919] work which you have done in connection with Mr. Heywood's underlying papers your first exposure, then, to New York Harbor costs on the freight side?

A. Well, I just said, Mr. Langdon, that we have never made a study on the scale that Mr. Heywood has attempted here.

Q. That wasn't my question.

A. We have made studies of certain of our pier operations, and things of that kind. They were an entirely different proposition and weren't related to import-export freight. They were made for management purposes, as to whether the piers would be continued in operation, or not. Things of that nature.

Q. But, so far as the movement of marine equipment in New York is concerned, the handling of freight by marine equipment, this, I take it, is your first exposure to costs, allegedly costs, if you want to call it, fine, for operations in New York Harbor? Is that correct?

A. That is correct.

Q. Now, Mr. French, has there recently, or was there recently referred to you by the traffic department for advice a proposal of the New York Central to increase the minimum rate for which lighterage freight would be handled free at New York Harbor?

A. I wasn't in on that particular proposal. They didn't ask me for that.

Q. Was your section involved in that proposal?

[fol. 1920] Mr. Colgren: Mr. Examiner, I must object again. Once again beyond the scope of the direct testimony.

Exam. Boat: You seem to be getting pretty far afield.

Mr. Langdon: Mr. Examiner, I respectfully, sir, say that we are entitled, I think, to inquire as to what studies, if any, have been made by the New York Central in the same area where they undertake to restate our costs, as testing their methods and the factors they employ in those restate-

ments. Now, our information is, and this is the line of my inquiry, that the New York Central recently proposed to increase its minimum rate at New York for handling free lighterage, and, in sponsoring that proposal, said that any lesser rate would be non-compensatory, and I want to inquire as to what, if anything, done in this section lies back of that proposal as we understand it.

Exam. Boat: Well, I still think whatever there is to that proposal apparently has a very remote bearing on this. I can't see what bearing it has on this.

Mr. Bongartz: I refer your Honor to the witness's Exhibit 113, in which he purports to make comment about the harbor operation study by our witnesses as not being representative of harbor operations of the other New York lines with respect to lighterage, car floatage, and so forth. Now, certainly the witness can't undertake to make a statement of this character and then seek some sort of a shield [fol. 1921] when his testimony is probed.

Exam. Boat: He could be interrogated as to that particular program, what the basis for that is.

Mr. Colgren: Certainly, Mr. Examiner. I have no quarrel with that.

Mr. Bongartz: If you please, one has to inquire as to his competence to make some of these statements. That is certainly pertinent.

Mr. Colgren: All right. Let's confine ourselves to inquiry into those things.

Mr. Bongartz: Mr. Langdon is seeking to ascertain the witness's competence.

Mr. Colgren: He hasn't asked Mr. French one question concerning anything which has to do with his direct testimony, and Mr. French has been on the stand 25 minutes.

Mr. Langdon: Just be patient, Mr. Colgren. We are coming to direct testimony. I am entitled, however, to lay a background for the examination, and I am entitled to inquire into the expertness of this witness and the work that he has done in relation to exactly the same subject, if any. Now, that is an obvious line of questioning for an expert witness.

Mr. Keenan: I don't think Counsel is entitled to advise

other counsel to be patient. I suggest the remarks be referred to the Examiner.

Mr. Langdon: I wonder if this would be a good time to [fol. 1922] adjourn for lunch, sir?

Exam. Boat: We will recess for lunch until 1:45.

(Whereupon, at 12:27 p.m., a recess was taken until 1:45 p.m. of the same day.)

[fol. 1923] AFTERNOON SESSION 1:45 p.m.

Exam. Boat: Come to order, please, gentlemen.

WESLEY F. FRENCH resumed his testimony as follows:

Cross examination (Continued).

Mr. Langdon: Mr. Examiner, if it is satisfactory to you, I would like to defer the matter that we talked about at the conclusion, just before the recess, until a later juncture of this examination of this witness.

Exam. Boat: All right.

By Mr. Langdon:

Q. Mr. French, will you refer, please, to your Adjustments No. 1 and 2 described at pages 3 and 4 of your Exhibit 113.

Are we to understand that, in making these adjustments, you followed and adopted the work sheets which were submitted in connection with this subject by the Philadelphia-Baltimore-Hampton Roads lines at the conclusion of the last hearing?

A. You are speaking of the work sheets that were prepared, I believe, by Dr. Edwards?

Q. Yes.

A. That is correct.

Q. You made no change beyond adopting the adjustments therein indicated? Is that right?

A. That is correct, sir.

Q. Now, on your Adjustment No. 3, which is at the top [fol. 1924] of page 4, I understand that you eliminated the

carload platform expense as included in the inland terminal costs.

A. That is correct.

Q. Did you at the same time, Mr. French, make any adjustment for the revenue credits that arise in connection with the performance of that work at these inland terminals?

A. Well, in our own instance we have very little or none of that work at inland terminals. Practically all of the carload platform handling of the cars is at ports. I made no such adjustment.

Q. You handle forwarder traffic, do you not, at your inland stations?

A. That is correct.

Q. And do you load and unload freight for forwarders at a certain amount per ton under your tariff at these inland stations?

A. Yes, sir.

Q. And that work would be included as an expense, would it not, in this account which you eliminated?

A. What I was attempting to do here was to set up inland terminal costs which would be most nearly applicable as could be to the traffic, import-export traffic moving to or from differential territory. And for that reason I made this adjustment. I considered all the platform pertaining to that traffic as platform expense as occurring before.

[fol. 1925] Q. Well, don't those inland terminal expenses which you used reflect the revenue adjustment which comes about because of the assessment of an unloading or loading charge by the railroad in handling freight forwarder freight at these inland stations?

A. That is correct.

Q. And the elimination of that revenue credit would be proper, would it not, if the expense of performing the service is eliminated?

A. That would result in a larger elimination of expense, yes.

Q. Say that again, Mr. French.

A. That would result in a larger debit for expense of carload handling at the port. If I understand your question

correctly, you want me to discard the revenue credit from the carload platform handling. Is that it?

Q. As an offset—

A. Or do you want me to offset this expense?

Q. As an offset to the expense of providing this service at inland points, which expense, as I understand, you have eliminated in your Adjustment No. 3.

A. That is correct.

Q. That would be a proper adjustment, then, to eliminate that revenue credit, would it not?

A. Probably it would be, yes. But I didn't do it.

Q. Well, is there any doubt in your mind as to the pro-
[fol. 1926] priety of eliminating that revenue credit?

A. Well, it would depend, of course, whether the entire revenue credit was at the inland points, but if we could identify it as being all at the inland points, I would say yes.

Q. Well, you don't assess that charge, do you, under your present tariff for performing the same service at New York?

A. I would have to look into that. I don't know.

Q. Now, Mr. French, turning to your Adjustment No. 4, you say that you have substituted for the overall out-of-pocket per cent of 80 per cent used in the Heywood studies the actual out-of-pocket percentages for the port costs, and you say that you have done this, "to better reflect that portion of port expenses which are variable with the volume of port traffic handled."

First let me ask you: Are these per cents that you have substituted for the individual account expenses actual out-of-pocket per cents?

A. Well, perhaps the word "actual" might have connotations beyond the reality of the matter of any out-of-pocket percentages. I don't suppose with a subject which enters a query area quite as much as out-of-pocket cost, you could use a word so strong and define it as actual. However, what I intended to say is that I was trying to use those out-of-pocket percentages which would be most appropriate to port costs, taking into consideration the kind of costs one finds at a port.

[fol. 1927] Q. Now, you say so far as operating expenses are concerned, that the use of those individual per cents

variable, or variable per cents, rather, produce an aggregate variability of 58 per cent.

Is that correct?

A. That is correct.

Q. Now, will you please, Mr. French, identify the principal accounts and the per cents of variability that you have employed in arriving at this 58 per cent?

A. In the work sheets, Mr. Langdon, that we submitted in connection with this exhibit, on pages 32 and 33, is a tabulation of each of the accounts, or the parts of the accounts that are comprehended in Mr. Heywood's study for Pennsylvania, and indicate the amount of the per cents, out-of-pocket per cents which we applied to each of those accounts.

Would you like me to read them?

Q. No. I don't know that it is necessary, if it can be understood, but—

Mr. Langdon: Off the record?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

This apparently is a set of Mr. Heywood's work sheets which are tendered as the next exhibit. It will be marked Exhibit No. 114, Mr. Heywood's working papers.

[fol. 1928] (Protestants' Exhibit No. 114, Witness Heywood, was marked for identification.)

Mr. Colgren: Mr. Examiner, they include other than Mr. Heywood's.

Mr. Langdon: Well, it should be understood that this Exhibit 114 includes the work sheets underlying all of the individual terminal studies as submitted and relied upon by the railroads serving Philadelphia, Baltimore, and Hampton Roads.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

We will assign Exhibit No. 115 to Witness French's working papers.

(Respondents' Exhibit No. 115, Witness French, was marked for identification.)

Mr. Colgren: Mr. Examiner, we have reserved 114?
Exam. Boat: Yes. 114 will be reserved.

By Mr. Langdon:

Q. Now, Mr. French, referring to page 33 of Exhibit 115, namely, your working papers, I notice as included among the accounts for which you have these individual variable per cents, Account 408, 50 per cent.

What is Account 408?

A. Operating floating equipment.

Q. Would that be an important account in this list of [fol. 1929] accounts for which you have set forth the individual per cents of variability?

A. It is an account to which charges arise almost exclusively at ports.

Q. Well, it is an important account from the point of view of dollars and cents, is it not, in this list of accounts which you have on your Sheets 32 and 33 of your exhibit?

A. That is correct.

Q. Is it the single most important account?

A. Well, I haven't made a determination of that. It would be one of the more important ones. I don't know whether it is the chief most important one, or not.

Q. Well, now, Mr. French, what is your source and justification for the use of 50 per cent as the per cent of variability for Account 408?

A. Well, the source is Senate Document 63, Appendix E, and that sets forth the out-of-pocket expense ratios for various primary accounts, account by account, that have been set forth by the Cost Section of the Commission.

Q. I show you a copy of Appendix E as included in Senate Document No. 63, and ask you if you would be good enough to identify this Appendix E as the Appendix E from which you took this per cent?

A. That is correct.

Q. What footnote appears opposite the 50 per cent figure [fol. 1930] as it is indicated in Appendix E opposite Account 408?

A. It is a figure 5, I believe. It is very small type.

Q. Would you read Footnote 5?

A. "Percentage based on Cost Section estimate."

Q. What was that cost section estimate that underlay their 50 per cent of variability?

A. I don't know, sir.

Q. You don't know what that estimate was?

A. No, sir. I accepted the figure.

Q. Without inquiry?

A. That's right.

Q. Do you have any knowledge at all as to what the cost section did in the way of studies to produce this 50 per cent for Account 408?

A. Well, not specifically, no.

Q. Will you turn now to page—off the record?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

By Mr. Langdon:

Q. May I invite your attention, Mr. French, to that part of Table 39 appearing on page 53 of Senate Document 63 which is set forth in the second column, at the top of the second column of that page.

Do you follow me?

A. Yes.

[fol. 1931] Q. Do you find Account 408 in that table?

A. Yes, sir.

Q. And what were the per cents variable with gross ton miles as set forth in that table under each of the columns there, 2, 3, 4, 5, and 6?

A. For Account 408?

Q. For Account 408.

A. Column 2, United States is 91 per cent, Eastern District, 80 per cent, Southern District 23, Western District 12, and the per cent used, 50.

Q. Do you understand that this table, or, rather, this per cent variable in relation to gross ton miles was computed

by the Commission's Cost Section after or before they arrived at the 50 per cent used in the case?

A. I don't know whether they did it before or afterward. I would suppose it could have been either time. I don't know.

Q. Are you familiar with this tabulation on page 53 to which your attention has just been invited? Are you familiar with this part of Senate Document 63 which we have just been talking about?

A. I read it over at one time. I haven't read it over recently.

Q. Why didn't you use the 80 per cent factor that is apparently applicable for the Eastern District for this Account 408?

A. Well, that is a percentage variable with gross ton miles, for example. Gross ton miles would have no direct [fol. 1932] relationship with a marine operation because they don't cover a marine operation.

Q. How about 50 per cent?

A. 50 per cent is the percentage which the Cost Section appears to have used if we are to rely upon Appendix E, and I accepted that.

Q. But you testified, I think, before that you did not know what lay back of the Commission's determination, the Cost Section's determination of 50 per cent?

A. No, I don't, no doubt studies.

Q. I beg your pardon?

A. No doubt studies of some kind, perhaps engineering studies, operating studies, statistical studies. It could be any of them, or a combination of them.

Q. What would you use, Mr. French, if you were undertaking today to determine the per cent variable for Account 408? What factors would you take into account?

A. I'd take into account just the—do you mean the percentages, or the elements I would consider?

Q. The elements that you would consider in order to determine the variability of that account.

A. Well, you would have to consider all of the items which might be measurable with fluctuation of traffic. You would have to test the account, you would have to break it

apart. It is a big account and covers many things. And you [fol. 1933] would have to take it apart and you would have to measure the different elements with the traffic changes, if that proved to be a basis that had any relationship to the variability, or not. You would have to test it out statistically, no doubt.

Q. Have you done so?

A. No, sir.

Q. Now, you keep on the New York Central, don't you, the tons handled in floating service at New York?

A. Yes. We have the tons handled.

Q. And you keep them by days and weeks and months and years?

A. The record is built up from a daily basis and eventually consolidated into a year's figure.

Q. You have also, I suppose, records of your expenses incurred in the operation of this floating service at New York?

A. Certainly.

Q. Have you undertaken in any way to relate the two over a period of time?

A. No, sir.

Q. So that you don't know, do you, what the variability of this expense, as included in Account 408, is with your traffic, or, rather, has been with your traffic.

A. No. I have used the 50 per cent as being applicable to Account 408.

Q. I notice included in your work sheets, page 32, Account 323, and a per cent variable of 10 per cent. [fol. 1934] Is that an important account from the dollars and cents point of view in relation to the other accounts shown on your pages 32 and 33, Mr. French?

A. That is an important account, that is correct.

Q. Would that be equally important to Account 408, or would it be less or more important than Account 408 we just talked about?

A. Well, I can't answer that offhand because I haven't measured it in those terms, but it is an important account.

Q. Now, what is the source of your use of 10 per cent as the per cent variable to that account?

A. Once again, Senate Document No. 63, Appendix E.

Q. Will you please turn to Appendix E and point out to me where you find that account?

A. That is in Appendix E in the table which deals with the maintenance of equipment and equipment rentals. It is the last page of Appendix E.

Exam. Boat: Are those the items that are covered in this account you were just enumerating there?

The Witness: I was trying to identify the location of it in the document, Mr. Examiner. There is no page number in my copy.

Exam. Boat: I see.

By Mr. Langdon:

Q. You are correct. It is the table on the last page of Appendix E.

[fol. 1935] A. That is correct. The first table on the last page of Appendix E.

Q. Now, that Account 323 carries a footnote, does it not, Mr. French?

A. That is the Cost Section's estimate again.

Q. Well, now, let's just read it and see.

What footnote does that account carry against the 10 per cent figure?

A. 5, I make it. It is so small.

Mr. Bongartz: It is 6.

The Witness: Is it 6?

6 says, "See Report of American Railway Engineering Association Committee, A.R.E.A. Manual, 1929, page 1408."

By Mr. Langdon:

Q. Did you see A.R.E.A. Manual, 1929, page 1408?

A. No, sir.

Q. You wouldn't know, then, how this account is treated in that manual, would you?

A. No, sir. I didn't see the manual.

Q. Mr. French, do you keep track in New York of your expenses as incurred in repairing of floating equipment as covered in this Account 323?

A. Yes, sir.

Q. Is that kept in monthly periods, or weekly periods, or how is that account kept.

[fol. 1936] A. Do you mean in the accounting department, or at the source?

At the source it is my job.

Q. Well, in the accounting department, then.

A. In the accounting department, it would be cast up once a month.

Q. Once a month?

A. Yes.

Q. There again, did you compare that expense as incurred by the New York Central over any period of time with the ups and downs of the traffic which was moving in that service in New York?

A. No, I didn't do it that way. I did test the account, however, test the particular ratio. I did it in this fashion. I had a discussion with our Superintendent of Marine Construction, pointed out to him that 10 per cent factor for variability and asked him if, in his opinion, that would appear to be a plausible factor. He reviewed his record and his knowledge of the situation, and he agreed with it. He made the statement that most of the repairs to marine equipment is not due so much to the volume of traffic as to the action of the elements, the age of the equipment, and perhaps damage which is part of the hazards of harbor operation.

Q. In other words, these costs are incurred whether the traffic moves or not?

A. In his opinion, they would be incurred as long as you [fol. 1937] had the equipment, you would incur these costs, or a great preponderance of them. Marine equipment generally is maintained on I guess what we could call a minimum basis, at least in respect to barges and lighters, things of that kind.

Q. Did you test that conclusion of your superintendent against any actual performance figures on the New York Central?

A. I accepted it. I had no readily available performance figures, and I made no test. I accepted his conclusions. He

would be the man who would know most about that, who does the work.

Q. Are you willing to supply us—first, excuse me—do I understand that this superintendent of yours, in giving you the opinion that he did, relied on certain records that he keeps?

A. I would suppose he must have, either by examining those records directly at the time or recalling them in his mind, but, in any case, he has in his possession the records of the repairs that he makes to equipment, and he can tell you whether it is done due to damage, let us say, to the equipment, or whether it is a regular repair which has to be made every so often. And, because of his close supervision of his work and actually being on the job, he knows, I think, better than I do, surely, how much of that repair might be attributable to the amount of traffic that the unit in question had handled.

Mr. Langdon: I suppose I should ask this question of Mr. Colgren.

[fol. 1938] Are you willing to supply for the record, Mr. Colgren, the data apparently in the hands of your superintendent that underlies the conclusion that Mr. French has adopted and is relying on, in turn?

Mr. Colgren: Well, I think we would have to define it far more clearly than has been done heretofore.

Mr. Langdon: Well, I am asking you to define it. I am asking you to produce the studies which, or records which support the use by your witness of a 10 per cent factor of variability for Account 323.

Mr. Colgren: Well, I think, Mr. Langdon, your request is a little extraordinary because the witness has indicated that this was, in large sense, a question of judgment, I think, as well as such repair records, and so on, as the marine superintendent may have had at hand. I really would be at a loss as to how to satisfy your request.

Mr. Langdon: Well, am I to understand, then, that there are no records of expenses incurred in this account which, when related to the ups and downs of traffic handled in this service at New York would support a ten per cent factor of variability?

Mr. Colgren: I think you are referring to what would have to be a study, and I am informed that there was no study made.

Mr. Langdon: No study made.

Mr. Colgren: In that fashion.

By Mr. Langdon:

Q. Such a study could be made, couldn't it, Mr. French? [fol. 1939] A. Oh, almost any kind of study could be made.

Q. Isn't that the way that you actually measure variability, to match the ups and downs of the expenses with the ups and downs of the traffic?

A. That is a way of doing it.

Q. Is there any other way?

A. Yes, I think there is. I think there is a way we used here, to rely on the judgment of an experienced man who handles that. He knows why he is repairing that equipment, he knows how the traffic is moving, he knows what the use is. He doesn't necessarily need to make a study unless we want something very specific indeed, because none of these ratios are completely black and white. They are the best fair estimates possibly that could be made at the time. We must look at them as estimates. Even your 80 per cent is an estimate.

Q. Now, go on to Account 241.

Is Account 241 included at Page 32 of your work sheet an important account in this list of accounts, Mr. French?

A. Yes, it is.

Q. Now, you used there a per cent of variability of 10 per cent.

Where did that come from?

A. That is again Appendix E of Senate Resolution No. 63.

Q. Well, will you return to Appendix E and find that [fol. 1940] account and identify it in the table that appears at Appendix E?

A. In that table it says Account 241, Wharves and Docks, 10 per cent out-of-pocket per cent, and there is a source footnote, if I read this correctly, as 1, which says, "See

Report of American Railway Association Committee A.R.E.A. Manual, 1929, Page 1406."

Q. Did you refer to A.R.E.A. Manual, 1929, page 1406?

A. No, sir.

Q. You obviously, then, did not know that that manual, in turn, referred to another A.R.E.A. proceeding as support for this 10 per cent factor?

A. I accepted it. The Cost Section had used it, and it was good enough for this purpose that I had in mind here. I was willing to accept it.

Q. Would it still be your opinion that it was an acceptable per cent variable if you knew that it was estimated before the First World War?

A. I don't think that pier construction, to my knowledge, which is very limited on pier construction, but we are still using wooden piles and things of that kind, and that is where a great deal of maintenance occurs, wooden superstructure, and I would say applies. Surely it applied to the report under consideration here.

Q. Now, Account 227. That also came from Appendix E, is that correct?

[fol. 1941] A. That is correct, sir.

Q. And what would be the footnote against that per cent variable as it appears in Appendix E?

A. That is Footnote 3.

Q. What does Footnote 3 say?

A. "Compute the aggregate out-of-pocket expenses for yard switching tracks, way switching tracks, and running tracks, respectively, by taking the following percentages of each account," and here is a table of them.

Q. Now, I think you read the wrong footnote.

A. Did I read the wrong one? Yes, I did read the wrong one, didn't I?

Down below that is 3: "Based on study by Engineering Section, Commission's Bureau of Evaluation."

Q. Do you know what that study by the Engineering Section of the Commission's Bureau of Evaluation consisted of?

A. No, I didn't examine it. I accepted the percentage.

Q. Would your answer be the same, Mr. French, for all the other accounts that appear in, or, rather, that are listed in pages 32 and 33 of your Exhibit 115?

A. That is correct.

Q. As of when, Mr. French, were these out-of-pocket per cents determined by the Commission's Cost Section?

A. My understanding is that they were determined in 1939, and I think they have since been updated or related [fol. 1942] to later traffic factors, but basically they are based on 1939.

Q. Are any of these accounts that you have used here, or per cents variable, have they been restudied or restated by the Commission?

A. Individually?

Q. Individually or in any other way.

A. I don't know of any individual restatement that the Commission may have made. Of course, since that time, we have had the overall 80 per cent which comprehended all of them.

Q. Now, was your traffic level at New York in 1956—and I am talking now of traffic that would be handled in marine service at New York—greater or less than it was in 1939, the year that you say these per cents variable were arrived at?

A. I don't know. I didn't make any determination as to that.

Q. If the traffic had increased, would it have affected those per cents variable, assuming they were correct at the time they were made?

A. If they were correct at the time when made and are still applicable, then the traffic increased, I don't suppose it would, no.

Q. You don't understand that the relationship between a variable expense and a constant expense would change as the traffic changes?

A. Well, if you have an expense which, let us say, is 50 per cent variable, and if you can establish that that is a [fol. 1943] true factor to use, and you increase or decrease your traffic, it will affect 50 per cent of your account.

Q. Now, let's assume that your traffic doubles and the variable expense before it doubles is 50 per cent. What,

after the traffic doubles, would be the relationship between your variable and your constant expense?

A. Well, if you have very large increases in traffic such as that, the chances are you are going to have some changes in your plant or you are going to have some changes in ways of handling the plant. It might change certain of these relationships, but then again you might have an entirely different picture as to the charges going to particular accounts, accounts which formerly might have been important would become less important, not get so many charges because of the changed plant operation. It is a very fluid thing.

Q. Well, isn't it true, though, just looking at the mathematics of it, that if you have 50 per cent of your expenses variable, 50 per cent as constant, and you have a doubling of your traffic, that the relationship then is a matter of mathematics, all other things being equal, becomes 66⅔ per cent variable and 33⅓ per cent constant? Doesn't that follow as a matter of mathematics?

A. Not as I understand variable costs, no.

Q. You don't think that follows, then?

A. No, because what you are talking about here is not a [fol. 1944] short term change in traffic, you are dealing with a long term proposition.

Q. Well, make it long term, then.

A. If it were for a long term, it might have some effect like that, certainly.

Q. Isn't it a simple matter of mathematics, Mr. French, that you have doubled that part of your expense which is variable with the traffic?

A. Which you assume to be variable.

Q. Which is 50 per cent. But you have not changed that part of your expense, also 50 per cent; which remains constant.

A. Why wouldn't you change the constant?

Q. Well, then, is it constant, a constant expense if you change it?

A. Well, over the long term, I suppose no expense is a constant expense.

Q. So that what we are interested in here is a long term variability? Is that correct?

A. That's right.

Exam. Boat: We will recess about ten minutes.

(Short recess.)

Exam. Boat: Come to order.

By Mr. Langdon:

Q. Mr. French, is it your understanding that in 1939, when the Cost Section estimated these per cents variable, the percentages of variability by individual accounts, that [fol. 1945] when weighted they added up to an overall percentage of 80 per cent variability for operating expenses, rents and taxes?

A. No, that is not my understanding. I made that test myself on the New York Central and found that it approximates 80 per cent with us, but I don't know that the Commission obtained their 80 per cent that way. In fact, I am sure they didn't.

Q. What did those individual account per cents add up to from the Cost Section's own finding at the time of Docket 28300?

A. My recollection is that it fell somewhere between 80 and 90 per cent, but I am not sure.

Q. Would it be a surprise to you that, as I read Senate Document 63, they added up to 72 per cent?

A. That is before they made any adjustments.

Q. And that was the per cent variable for the operating expenses as a whole that the Cost Section used in 28300?

A. That was before they made any adjustment for later traffic levels. Yes, I think that would be about right.

Q. In other words, these per cents which you have been using are those per cents that antedate the later adjustments made by the Cost Section to which you referred?

A. Yes, that's right. In the overall, obtaining the overall percentage, 80 per cent, whatever it might have been.

Q. Now, to pass for a moment to a different subject—I beg your pardon, there are a few more questions on this same subject.

[fol. 1946] Now, at pages 4 and 5 of your Exhibit 113, you state on at least two different occasions that this water

service in New York and the handling of that freight in the harbor at that point is, and I am quoting your testimony on page 5, "highly specialized operations."

And on page 4, you characterize it as a, and I am quoting, "specialized operation and specialized property."

Do you find those two references?

A. I have the one on 5. Yes, I see the one on 4.

Q. Now, what do you mean by "specialized operation"?

A. What I mean to say here is that when you are dealing with this port as opposed to contemplating the whole operation of the railroad, where we are generally talking in terms of land transportation strictly, we are dealing with facilities and equipment which are either related to or move over water and which, of their nature, therefore, are specialized and peculiar to that extent. We don't find such facilities generally elsewhere on the railroad property. There may be some minor exceptions, but by and large, we find that sort of thing at the ports.

Q. Well now, would you regard it as fair, therefore, to charge the traffic that uses these specialized facilities with the constant expenses of those specialized facilities?

A. The constant expenses?

Well, when you come to deal with anything more than [fol. 1947] out-of-pocket expenses, you move into an area which is largely determined for you by considerations such as competition, traffic arrangements, and a host of other things. Obviously some place you must recover those constant expenses. We know that. But whether you can obtain them all at the port and at the particular facility that occurs, that would be the millennium if you could do that on railroad property generally. We are not always so fortunate.

Q. It would be the proper way from a cost point of view, would it not, in determining the costs of New York Harbor?

A. I don't think so for the purposes we have in mind here where we are dealing with the question of whether there is any compensation involved from the operation of our harbor.

Q. Well, aside from the ability of the traffic to bear the constant expenses, is it not correct from a cost point of

view to charge the constant expenses arising in connection with a specialized operation to that operation?

A. It would be correct, but it is not always practical. In fact, we have many rates which have to be made to reflect less than our full cost. That isn't necessarily peculiar to a port operation or any other one particular phase of railroading.

Q. Well, can you name another specialized operation? Would the operation of a coal and ore unloading facility be a specialized operation?

A. Yes. We don't always recover our costs there, either.

[fol. 1948] Q. It is proper, though, is it not, Mr. French, to charge the operation of that special facility with the entire cost of operating the facility, in other words, charge the entire cost of that facility against the traffic that uses it?

A. That can be done, of course, but—

Q. Isn't it the proper thing to do?

A. I don't know what you mean by "proper", Mr. Langdon. Statistically speaking, as I say, if you could take the full cost of any particular piece of property that some part of your traffic use and say that that traffic must bear this full cost, yes, that is most desirable. We can't do that in all cases. We have to be realistic. And some place along the line some other traffic will have to, in effect, pick up the tab for whatever deficiency there is.

Q. But that would still be a deficiency in the full cost of the specialized operation, would it not, and in any effort on your part or anybody's part to determine the full cost of the specialized operation, those constant expenses would have to be included, would they not?

A. They would have to be included. I think, though, you would have to treat them—we do have to treat them in many cases as an overhead property instead of generally over the operation.

Q. Well, is that true, Mr. French, with the constant expenses that arise in connection with a specialized opera-

[fol. 1949] tion? Don't you charge the traffic that uses the facilities with the constant expenses arising in connection with the specialized operation?

A. Well, the theory, in theory you may attempt to do it. In practice, of course, you know we don't, none of us do. As a matter of principle it is desirable.

Q. And correct?

A. And that has nothing to do, of course, with the compensatory effect of the rates that you may institute. In fact, it makes the rates particularly compensatory, inasmuch as they will cover the full cost.

Q. Well, now, have you read, in that connection and in relation to that subject, the advice, if you call it that, contained in Senate Document 63 wherein they discuss the proper pricing of specialized operations from the point of view of the inclusion or non-inclusion of constant expenses?

A. No, sir.

Q. You have not read it?

A. No, sir.

Exam. Boat: Whose advice is this, Mr. Langdon, may I ask?

Mr. Langdon: It is contained in the letter from the Chairman of the Interstate Commerce Commission transmitted in response to Senate Resolution No. 119, certain information on rail freight service costs in the various rate territories of the United States. This is the document [fol. 1950] that Mr. French is relying upon, as I understand it, for his per cents of variability which he has substituted for the variable per cents used in our cost studies.

Exam. Boat: I understand, sir.

By Mr. Langdon:

Q. Now, Mr. French, would you be good enough to pass over to your Adjustment No. 8.

As I understand it, Mr. French, you would substitute for the six per cent return included in Mr. Heywood's exhibit a four per cent return.

Is that correct?

A. That is right.

Q. I assume, of course, that the other roads for which you speak have concurred in that adjustment, namely, the Erie and the Lackawanna and the Lehigh and the others?

A. They have at least tacitly concurred in it. They are aware of this adjustment, and I have heard no complaints.

Q. Has the New York Central, in recent years, been concurring in cost studies made for its own account as well as other eastern lines which had included the six per cent return?

A. We have asked for six per cent return many times. In fact, in this reference that I gave you here, I & S Docket 6679, we asked for six per cent there. We were not allowed it.

Q. Have you changed your view as to what a proper rate of return is?

A. I haven't changed my view at all as to what a proper [fol. 1951] rate of return is. I think it varies with what you are talking about to begin with. But, in any case, we were allowed four per cent in the switching charges at Detroit, Michigan, case, and I don't see any reason why we should claim six per cent here, or should anyone else necessarily. We were allowed four. Why should other railroads get six?

Q. Have you, in other words, changed your policy with respect to what you regard as a proper rate of return?

A. No, sir. This has nothing to do with what we regard as a proper rate of return. As a matter of fact, my personal opinion is that you can't very well say, well, it should be six per cent, or four per cent, or ten per cent. It all varies with the particular service you are talking about. Some service is so hazardous, if you will, like passengers, that probably you could justify much higher than six per cent return.

Q. Is the operation at New York in the hazardous class?

A. I wouldn't say so.

Q. You would not?

A. No. Not in that sense.

Q. Well, do I understand, then, that you do not necessarily say that a six per cent return is an improper return to include in a cost study?

A. It is an unrealistic return, not an improper one. I think it is unrealistic in view of the general findings with respect to a return allowed by the Commission in the east-

[fol. 1952] ern railroads. At least that has been our experience. The Commission says that a return of four per cent more nearly approaches the return in Official Territory.

Q. Is this the first time that the New York Central and the lines allied with you have affirmatively sponsored a rate of return less than six per cent in any cost study that you have ever subscribed to?

Mr. Colgren: Mr. Examiner, I don't think that the witness has indicated that he is espousing this for any specific purpose other than to indicate a restatement of costs.

By Mr. Langdon:

Q. Well, if you are not espousing, then, a four per cent return, you are at least using the four per cent return, and I'll ask this question: Is this the first time in the history of the New York Central in recent years that you have sponsored a cost restatement including a four per cent return on investment?

Mr. Keenan: A cost restatement, what, a four per cent return?

Mr. Langdon: A four per cent investment.

Mr. Keenan: Including, did you say?

Mr. Langdon: Well, I guess the question ought to be read, then.

Mr. Keenan: I didn't hear it, sir. I am sorry.

Exam. Boat: Read the question.

(Question read.)

[fol. 1953] Mr. Langdon: Which contains a four per cent return on investment. Maybe that is a little clearer.

The Witness: We have had cost studies in which we have claimed six per cent. We have had cost studies in which we claimed no return at all. We just merely make ourselves whole.

By Mr. Langdon:

Q. Do you make yourself whole when you don't include any return on your investment?

A. Well, technically, I expect you don't, because you are entitled to a profit, and that is your profit, and your money for the use of capital, and so on and so forth, which you would be foregoing. To that extent, you wouldn't be whole without any kind of a return. But we have been in cases, we'll probably have to be in them again, where there is no question of return, we will be very glad to cover our cost excluding return.

Q. In other words, you trade an old dollar for a new? Is that right?

A. That's about all you can hope to do in some of them.

Q. What, Mr. French, is your definition of a compensatory rate?

A. Well, I don't have any hard and fast definition that I have ever dreamed up, but it would certainly be a rate, which in the light of the property involved and the hazard surrounding the operation, would permit you to cover your costs of capital and have some reasonable compensation for your effort. I know that is very indefinite, but I don't think a person can be much more definite. It is kind of foolish to say, well, it should be six per cent, or four per [fol. 1954] cent, or ten per cent, or two per cent. It all depends, as I say, what you are talking about.

Q. Well, when the traffic department refers to your section an inquiry as to whether or not a proposed rate that they have in mind is compensatory or not, what standard do you apply in making reply to the traffic department?

A. We give them generally, state the cost two ways, with or without a return. They can decide where they want to go.

Q. You don't, then, include a rate of return even on equipment in that part of the variable cost information that you give them in response to their request?

A. Well, as I say, we give them first a cost, a variable cost stripped of any element of return. And then we give them a six per cent return. They move between those two points.

Q. You give them a six per cent return?

A. Yes. We always give them a six per cent return.

Q. Is that after income taxes?

A. Yes.

Q. And is this four per cent that you have substituted in your cost restatements, is that after income taxes?

A. That is before, I believe.

Q. Before income taxes.

Are income taxes allowed at all in your cost restatements?

A. Not in the port.

[fol. 1955] Q. Not in the port.

On what theory were they excluded?

A. I don't know. They weren't in Mr. Heywood's figures. At least, we couldn't find them. We believe they are not.

Q. Do you regard income taxes, of course, as a proper element of expense?

A. I have made no effort to distribute any income taxes. I took the studies as I found them and adjusted them from there.

Q. Now, Mr. French, in the light of this work which you have done since October in studying harbor costs at New York, is it your opinion that the handling of export-import traffic at that port is more expensive than the handling of domestic traffic at New York?

A. Mr. Langdon, I made no study of the Port of New York. I have no opinion.

Q. You have no opinion?

A. No, sir.

Q. Have you any opinion as to the relative costs of handling freight by lighter as opposed to handling freight by car float in the New York Harbor?

A. I have made no study.

Q. Well, do you have any opinion as to which is the more expensive?

A. Well, I would imagine lighter might be a little more expensive inasmuch as you have to handle the freight out [fol. 1956] of the car onto the lighter, and so on. I haven't made a study, though. I might be mistaken.

Q. Have you any knowledge as to the—of any switching service that would have to be provided on export-import traffic?

A. Well, there is only one I have any knowledge of of

my own, and it is in connection with lining up cars at the port for an incoming ship; let us say, that contains some particular lading, and you have to accumulate certain types of cars. That is not generally, at least with the New York Central, it is not a big problem for us at New York.

Q. You read the verified statement of Mr. Walter—excuse me—strike that.

Is Mr. Walter H. Harris the lightering superintendent of the Marine Department of the New York Central Railroad? Do you know him?

A. Yes, sir.

Q. Have you read the verified statement which he submitted a few weeks ago in Ex Parte 212 bearing on this very subject?

A. No, sir, I have not.

Q. Mr. French, at page 11 of your statement, paragraph 4 reads as follows: "The protestants' harbor operations as studied are not representative of the harbor operations of the other New York lines with respect to lighterage, car floatage, trucking-in-lieu-of-lighterage and ship to car."

Now, what do you base that conclusion on?

[fol. 1957] A. Well, that conclusion is based on two things. First of all, it is based on relative volumes of traffic, let us say in tons. And then it is based on the kinds of traffic, because there are certain kinds and types of traffic which exist in the harbor which I could not find represented in the protestants' studies. Also, there are varying amounts of lighterage versus car floatage versus, let us say, ship-to-shore transfer, which, incidentally, the protestants' study apparently did not go into at all. So that I concluded that they were not particularly representative of the general picture of the harbor operation.

Now, another angle comes in there, and that is the relative levels of traffic. Maybe the protestants happened to have a particularly low level of traffic for September, for example, in their study compared to that experienced by other roads in the harbor. I don't know. But—

Q. Just a minute. You said you didn't know whether that was true?

A. Well, I say I can only conclude these things from the evidence. As I say, I haven't made any study, I just merely assembled some figures, then on the basis of these figures you can see that they have varying percentages of lighterage and car floatage and trucking in lieu of lighterage and wheel to keel operation compared to the other line.

Q. Well, now, dealing first with the relative volumes of [fol. 1958] traffic bearing on this question of whether or not the protestants' harbor operations are representative of your operations, I am not too clear as to what you mean by that. If you will confine your answer to that point of distinction, as I understand it, you would make.

A. All right, Mr. Langdon.

Would you be kind enough to turn to my work sheet, page 34?

Q. All right. I have that before me.

A. That particular one you will notice, taking the New York Central, the Erie, the New Haven, and the Lackawanna combined, and let's take the month of September, because in 1956 that was the study month primarily relied on by protestants. Lighterage amounted to 70.4 per cent of our tonnage handled in the harbor. On the other hand, the protestant roads' lighterage amounted to 87.6 per cent. Car floatage for the New York Central, respondent roads, and so on, amounted to 5.9, and the protestants', 2.2. Now, trucking in lieu of lighterage was pretty close together there, 10.7 for the respondents and 10.2 for the protestants.

Exam. Boat: The latter figures you are stating in each instance are composite, are they, of some others that appear on here?

The Witness: That is correct, sir, yes. The New York Central, Erie, New Haven, and Lackawanna are the first [fol. 1959] set of figures, and the Pennsylvania, Baltimore and Ohio, and Jersey Central are the second group.

Exam. Boat: Oh, I see. They are stated here below.

The Witness: That is correct.

Then finally we have the wheel-to-keel, as we call it here, or ship-to-shore, possibly in a simpler term, and we had about 13 per cent of that tonnage. All of that, incidentally,

occurred on the New York Central. And the Pennsylvania, B&O and Jersey Central didn't report any of their wheel-to-keel traffic if they had any during the month.

So that you see, we do have a different composition, relative composition of tonnages in the export and import traffic during September 1956.

By Mr. Langdon:

Q. Well, now, incidentally, where is the Lehigh shown here?

A. The Lehigh is not shown.

Q. They failed to report?

A. That's right. They were requested, but they did not report.

Q. Well, now, concerning yourself now with this question of, or, rather, with that part of the freight which was handled in lighterage service, do you have any reason to believe that the costs for the lighterage service as performed by the Pennsylvania, B&O, and Jersey Central, are unrepresentative so far as the New York Central, Erie, New Haven, DL&W performed lighterage service?

[fol. 1960] A. Only to this extent, that, taken together, the Pennsylvania, Baltimore and Ohio, and Jersey Central are, let's say, a third or probably a little less than a third of the railroad harbor operations at New York, and whether that is a big enough sample in view of the fact that we also have the consideration of different types of traffic consist, which would affect lighterage, I personally would feel that it isn't particularly conclusive. At the other ports, as I recall it, we had practically a hundred per cent railroad representation in the studies and here we only have a minority representation, which necessarily had to be so, no doubt.

Q. Well, it is true that we may handle at New York less tonnage than your group of railroads, but what I am interested in knowing is whether or not, in your opinion, our costs which pertain to a third, let us say, of the whole New York tonnage in lighterage service are representative of or not of your costs for that same service?

A. When you say costs, Mr. Langdon, do you mean your costs as found by Mr. Heywood and Mr. Mollman in their studies?

Q. Well, is there any reason to believe that what is a correct cost for lighterage in the case of the three roads that are protesting would be an unrepresentative cost for the four roads that are included here, the New York Central, Erie, New Haven, DL&W, so far as they perform lighterage service?

A. Well, obviously, I made certain criticisms, if you [fol. 1961] want to call them that, of the protestants' study at New York which I was unable to evaluate or was unable to restate. To the extent that they would affect the overall showing of the costs of the protestant lines, I would feel, at least to that extent; and that is an undefinable extent because I didn't know how to restate their figures, as I mentioned in my verified statement, to that extent at least I think that the application of their costs to the other railroads might compare.

Q. You found what you think would be an overstatement in our costs for lighterage service. Now, I am asking you to assume that the correct costs of lighterage service for the three protesting railroads has been determined, and my question is, then, would such costs then be representative of the lighterage costs for the New York Central, Erie, New Haven, and DL&W?

A. If we had found a correct cost for the protestant roads. Well, within broad limits it might be representative. The consist of traffic is going to enter this picture rather severely, and the location of the terminal facilities is going to have an effect on your lighterage. The age of equipment is going to have an effect on your lighterage. There are so many variables as among railroads even after you had found a very firm cost for the protestants.

Q. Well, now, let's take this question of consist of traffic. In your lighterage service do you handle any different types of traffic, relatively speaking, than the protesting [fol. 1962] railroads?

A. I think the protesting railroads, some of them, at least, have rather large quantities of perishable traffic, and I know the Erie does, but the New York Central doesn't have as much.

Q. Handled in lighterage service?

A. I think there is some lighterage.

Q. That is car floatage, isn't it?

A. Car floatage? Well, they use these refrigerator lighters. Maybe that is all domestic.

No, it couldn't be.

What is that? Does somebody know?

Mr. Keenan: Pardon me, Mr. Langdon.

May I be excused until tomorrow morning?

Exam. Boat: Yes.

The Witness: At any rate, there is a lot of refrigerator and heater lighterage service that they operate which we do not have as large a quantity of. I presume it must be perishables.

By Mr. Langdon:

Q. You think, then, that since the protesting railroads handle in lighterage service, as distinguished from car floatage, more perishable traffic, that their costs for lighterage service would tend to overstate your costs for lighterage service?

A. I didn't say they handle more. I don't know whether they handle more or less. I made no comparison or analysis of the traffic item by item. I am just pointing out [fol. 1963] that as a possible area of difference.

Q. You don't know whether it is an area of difference, or not?

A. No, but it is a possible area of difference, I think.

Q. In other words, these differences that you have referred to here, are they only possible areas of difference between the lighterage costs for the protesting railroads and the respondent railroads?

A. Well, until you make a cost finding, everything is just a possibility that you are trying to explore, yes.

Q. You have, of your own knowledge, no reason to believe, have you, that in the operation of the lighterage—strike that.

Is there any difference that you know of in the operation of the lighterage service by protesting railroads which

would make their costs any different than the lighterage operations of the respondent railroads?

A. Yes, there is one thing I know of. I think the Pennsylvania, I believe, has a very large fleet of equipment in the harbor, and some of that equipment is rather old. Now, I don't know what effect that will have on maintenance. It may make for higher maintenance, it may make for perfectly normal maintenance. You have to study it. I would think it would be high maintenance, maybe not. On the other hand, on the New York Central, in contrast, we have recently invested in a large fleet of modern steel barges and lighters which require a small amount of maintenance. Now, that might be one of those areas of dif- [fol. 1964] ference. You have to test these things, you just can't make general assumptions like that, Mr. Langdon, in my opinion.

Q. Well, I am not making any assumptions. I am asking you for your opinion, Mr. French, as to the representative or unrepresentative character of these lighterage costs of the protesting railroads. You said they are not representative and I am inquiring as to the basis of your conclusion.

A. The basis of it is, first of all, because of the method by which these costs were assigned, let us say, to lighterage in some instances on the basis of tonnage, or however they were put there. And we see these variations in tonnage among the different railroads and among the groups of railroads in the harbor. That, in itself, would affect the lighterage cost. But you asked me to assume a situation where we had found good hard and fast lighterage costs for the protestant lines, and then you asked me my opinion as to whether those such costs as that might be applicable to the other roads, the respondent roads in the harbor.

I don't know, Mr. Langdon, whether they would, or not. I can see possibilities that might upset the apple cart there. But maybe they would turn out to be satisfactory. It is a moot question.

Q. What have you done to establish or disestablish that representative character of our cost showing? Have you

submitted in any way, in any form or shape in this restate-
[fol. 1965] ment of yours any evidence of the New York Central, or any of the respondent carriers which you represent, have you given us any figures at all bearing on this cost problem at New York Harbor?

Mr. Colgren: Mr. Examiner, I must object to that question. It is not for the witness to say as to the effect of his testimony. He certainly should be queried on his testimony and not the effect thereof. That is for the Commission and the parties to consider.

By Mr. Langdon:

Q. Well now, Mr. French, go over to the columns under Car Floats there in your same work sheet.

Would your answers be the same with regard to the representative or non-representative character of the car floatage costs of the protesting railroads as they were in regard to those same questions when asked in connection with the lighterage service?

A. Yes.

Q. Now move over to trucking in lieu of lighterage.

Would your answers be the same?

A. Well, there, as I pointed out, we are in a fairly narrow area as far as this will indicate. On the face of this, we might expect to find similar costs. We probably ought to apply a few further tests because of the nature of trucking in lieu of lighterage. It is a rather peculiar type of operation and is generally subject to local arrangements of one kind or another, which would have to be explored. But, on the face of this, just on the basis of the [fol. 1966] tonnage, I would expect, other things being equal, to find a close approximation in that area.

Q. That represented during the year 1956 15 per cent of your tonnage, is that right, your export-import traffic in New York, talking of the New York Central now?

A. The New York Central, yes, sir. The trucking in lieu of lighterage, that is correct.

Q. Now, moving on to this wheel-to-keel tonnage which you show there on your work sheets.

Can you give us, Mr. French, the principal commodities included in that showing?

A. Well, the principal commodity there is bauxite.

Q. That is a bulk commodity?

A. Yes, sir. It is an ore.

Q. And that moves through a special facility that you have over on the north shore? Isn't that right?

A. That is handled at a pier which is devoted to the handling of ore, the bauxite ore particularly. Some other ores are handled there.

Q. Is the destination for that bauxite the Niagara Frontier, principally, or don't you know?

A. I think it is. I am not authoritative on that point, but I believe it is.

Q. Now, would that comprise the major portion of this wheel-to-keel tonnage?

[fol. 1967] A. That would be the major portion of it.

Q. Now, what other tonnages would be included there, what other commodities, rather, would be included there?

A. There are some, I believe, some chrome ore that moves very occasionally, and some manganese ore, and there are some other miscellaneous ores, but they are occasional movements. The principal one is the bauxite.

Q. You don't have any general traffic, general cargo that is handled wheel-to-keel, do you?

A. Not at that pier, no.

Q. Or at any other pier in New York?

A. Well, the only other one we have, of course, and that is a special operation, that is the banana terminal, as we call it, for the United Fruit at Weehawken. That is a wheel-to-keel operation. But that isn't operated by us, that is operated by the United Fruit.

Q. Now, Mr. French, how did you obtain this breakdown of your export and import traffic at New York for the year '56 and for September 1956, broken down in the way that you have here? Was that a special study that was undertaken by each railroad?

A. Yes. The three railroads, other than the New York Central, shown there furnished their figures to me from their records, and the New York Central figures, of course, are obtained from our records.

Q. All of this traffic that you show there for the New [fol. 1968] York Central wheel-to-keel is import traffic? Is that not so?

A. That is correct, sir.

Q. You have no export traffic handled there?

A. No, sir.

Q. Now, bearing on the representative character of these, as possibly bearing on the representative character of these costs as offered and included in this record on behalf of the protesting railroads, I come back to the request that I made at the conclusion of the hearing this morning regarding what purports to be, or we understand to be a study of harbor costs by the New York Central, which study resulted in a proposal that the minimum rate on export-import traffic be accorded free lighterage, be increased from 27 to 32 cents, and I ask Counsel if he will be willing to supply that study which, as I gather, Mr. French said it was made in his section, not by him.

A. No, sir.

Mr. Colgren: I don't understand that that is true, Mr. Langdon.

By Mr. Langdon:

Q. Did I misunderstand you, Mr. French?

A. I am afraid so, Mr. Langdon. We had nothing to do with that particular study. We had to do some phases of Ex Parte 212, but not that phase of it.

Q. Well, this is not Ex Parte 212.

A. Oh, I am sorry. I thought you were talking about that.

Q. No. I thought I was talking about a proposal that I thought I described this morning that has been made, as [fol. 1969] we understand it, by the New York Central Freight Traffic Committee in New York, suggesting that the free lighterage in New York be limited to shipments which pay the New York Central or connections a minimum of 32 cents per hundred pounds, on the ground that anything that pays less, we have the information, is not compensatory. And I had understood that your section, not you, was in on that proposition.

A. No, sir.

Q. You know nothing about it?

A. Nothing whatsoever.

Mr. Langdon: Will Counsel be willing to determine whether or not such a proposal has, in fact, been made, and whether or not it is supported by a study by the New York Central?

Mr. Colgren: Mr. Examiner, I am again faced with this proposition of Mr. Langdon trying to run my case for me. I have no intention, of course, of departing from our proposed line of testimony and so on. I personally know nothing of this study or whatever it might be, proposal that Mr. Langdon just referred to. My witness, Mr. French, shows no knowledge of such a study. It seems to me then it is not up to me to offer to supply something I know nothing of or even be required to do so.

I have been placed in the unfortunate position of having to deny a sometimes almost outrageous request by the opposition, and I am afraid that—

[fol. 1970] Exam. Boat: You are perfectly free to refuse to produce it.

Mr. Colgren: Well, I have had to do that throughout this whole proceeding, Mr. Examiner, and I just want the record to indicate that I feel that some of them have been most unfair, with an attempt, I think, possibly to put our conduct of this proceeding on the footing of reluctant participants before the Commission, which is certainly not our position or intention.

This is just another one of those instances where I feel that we have been faced with a most improper request. I, of course, refuse to comply with it. But I just wanted the record to indicate how I feel on the situation.

Exam. Boat: All right.

Mr. Langdon: I take it, then, Mr. Colgren, and you don't have to rise to decline this request, but I take it your answer would be the same if I asked you for a copy of the New York Harbor marine consolidation study that your road participated in and was completed in 1955?

Mr. Colgren: Yes, that is right, Mr. Langdon, my answer would be the same.

By Mr. Langdon:

Q. Skip over, Mr. French, please, to page 16 of your statement.

You refer, in the middle of paragraph 5, to a visit which you made to the Jersey Central yard at Jersey City.

Do you see that reference?

[fol. 1971] A. Yes, sir.

Q. When was that visit made, Mr. French?

A. That visit was made on Good Friday last.

Q. Did anyone accompany you while you were on that inspection trip?

A. Yes, sir. Mr. Jerry Gilbert.

Q. Mr. who?

A. Jerome Gilbert.

Q. Was the Jersey Central advised of your visit?

A. No, I don't think so.

Q. You just went on the property yourself?

A. No, we didn't touch the property.

Q. You didn't see the properties?

A. Yes, we saw them very well.

Q. How did you see them?

A. From a helicopter.

Mr. Bongartz: The Port Authority helicopter?

The Witness: Yes.

By Mr. Langdon:

Q. The Port Authority helicopter?

A. Yes.

Q. And that constitutes the basis for your testimony with regard to this yard?

A. Yes. We circled that yard several times and hovered over it and got a pretty good look at it and a number of pictures of it.

[fol. 1972] Q. You took a number of pictures of it?

A. Yes.

Q. Do you have those pictures with you?

A. No, sir.

Q. At Page 17, you refer, in paragraph 8, to our exhibits which you say "show a disproportionate number of sample

shipments when measured against actual traffic movements," and you cite as an example of that Commodity No. 3.

Did you undertake in any way, Mr. French, to apply the revenue-cost ratios either in your restatement on Mr. Heywood's original exhibit against the entire traffic as laid out, or at least 96 per cent of the traffic as laid out in Mr. Keefe's exhibits previously received in this record?

Mr. Colgren: I don't believe I understand that question, Mr. Langdon.

Could we have it restated, please?

By Mr. Langdon:

Q. Well, did you undertake, in the first place, in your accompanying exhibits, that is, the exhibits that accompany Exhibit 113, you set forth certain revenue-cost ratios in the final column, which reflect your ratios after the statements that you have made and Mr. Heywood's cost figures.

Is that not correct?

A. Yes. I did attempt that.

You are talking about the total, sir?

[fol. 1973] Maybe I am a little bit confused.

Q. I am talking about the ratios in Column 13 of your Exhibits WFF-1 and WFF-2.

A. Yes, those are restated. Those are a result of the restated costs.

Q. And in a comparable column in Witness Heywood's exhibits you will find those same ratios?

A. That is correct.

Q. As he computed them?

A. As he computed them.

Q. Now, my question is: Did you apply those ratios, either of them, as determined by Mr. Heywood in the first instance and as restated by you, against the entire traffic as it is shown in the consolidated traffic study of Witness Keefe?

A. Did we do that? No, we didn't do that.

Q. Now, on page 18 you list commodities there.

Would it be your opinion that in any statement of the commodities going into a representative cross-section at the Port of New York that these commodities be eliminated?

A. Well, I would think, insofar as it would apply to the protestant roads, for example, Item 311, Aluminum Ore and concentrates, they had an item of one car. It is not too important, but just there to point out the difference, that they had one car there, whereas in the traffic exhibits we had no movements to any territory in that particular class. [fol. 1974] And then, as to the other one in the import group, we had no movements to differential territory even though they were represented in Mr. Heywood's exhibit as to import traffic.

Similarly with the group of commodities under export traffic.

Q. I gather that it is your testimony, then, in a representative cross-section this should be left out?

A. I would think certainly Item 311 and Item 43 would be left out of a New York study, I would think, and as long as we are dealing with differential territory movements, I would think the others could likewise have been left out of Mr. Heywood's. But I think you could study them as a general port study proposition.

Q. Now, at page 20, you refer to the maintenance costs, repair costs for floating equipment of the B&O.

In a cost study of this kind, what is your opinion as to the best way to state floating equipment maintenance costs?

A. Do you mean how long a period of years do you use?

Q. Yes.

A. Well, I would think that you would have to, first of all, find out what your maintenance cycle normally is and then try to relate the number of years that you use to the maintenance cycle. However, you would also have to keep in mind any unusual charges that might occur in one year that might not be appropriate to succeeding years, or vice versa.

[fol. 1975] Q. Now, over on page 23—no, I beg your pardon—yes, page 23, the final paragraph on that page refers to a difference in revenues at New York per ton of $9.30 as computed in Witness Keefe's exhibits.

Do you know, Mr. French, what the differences are in the car revenues for export-import traffic as handled at New York and Baltimore?

A. No. I only worked it out per ton.

Q. Well, now, turning the page, you refer to a difference in cost under the original Heywood exhibits of $7.81 per ton, and you say that those exhibits showing a higher cost at New York are only $7.81 per ton. Now, do you regard that difference as a modest difference?

A. In view of the type of traffic and the rates under which it moves, yes.

Q. What does that difference amount to per car under the average loading at New York? Do you know?

A. I would have to work it out.

Q. Can you work it out, please?

A. I'll see if I have it here somewhere.

Do you want me to work it out now?

Q. Well, can you approximate it?

A. I can have my assistant here work it out, if you want.

Q. Yes, I would like to have it worked out.

You have computed here an average cost per ton at New [fol. 1976] York and Baltimore to arrive at an average difference of $7.81 per ton. That is, you have done that on the basis of Mr. Heywood's figures. I am asking you what that difference per ton is when translated into terms of carload.

A. Could we work that out and submit it, sir, as soon as we can get it?

Mr. Colgren: Well, the answer, I presume, is "No" from the witness, that he doesn't know what it is.

Mr. Langdon: That is satisfactory if that is the answer.

The Witness: I can develop it if you desire to have it presented.

Mr. Langdon: All right. Suppose you develop it and supply it later.

The Witness: Sure.

Mr. Colgren: Are we sure that we have the necessary data to do that?

The Witness: Well, if we don't have it here, we will have it in New York.

Mr. Colgren: I mean, average weight per car, and so on.

The Witness: Yes. We can work out an average weight per car.

Mr. Langdon: Mr. Bongartz is next. I am through, sir.

Cross examination (Continued).

By Mr. Bongartz:

Q. Mr. French, as I understand your testimony, you have held your present position for the last year and a [fol. 1977] half.

Is that right?

A. Since 1956, I think it was.

Q. September 15th, 1956?

A. Yes, that is correct.

Q. And prior to that time you were Assistant to the Comptroller for seven years?

A. Yes.

Q. And what were your duties in that position?

A. Really for the most part the same as my duties are now except that, during much of that period, of course, the department was under the jurisdiction of an Assistant Comptroller.

Q. Who was that?

A. That was Mr. J. D. Hagerty.

Q. In other words, for the last eight and a half years your work with the New York Central has been in cost accounting?

A. A great deal of my effort has been in that field, yes.

Q. How far back for the last eight and a half years out of the 28 years could we say you have been engaged in cost work?

A. Well, I have been in that particular office in either statistical work or cost work since about 1936.

Q. At least since 1936 your activities in the Comptroller's office have been devoted to cost accounting?

A. Or statistical, operating statistics, traffic statistics.

Q. Mr. French, does Exhibit 115, does it include all the [fol. 1978] work papers underlying your testimony and the exhibits which accompanied it?

A. All but a very few minor miscellaneous papers that we didn't think would be of particular assistance.

Q. Minor and miscellaneous?

A. Well, we gathered information from various sources

and placed it on those documents. It would be largely repetitious.

Q. You mean that before sending out your work papers you made a selection of what you were going to send out?

A. Not exactly that, no.

Q. Doesn't it amount to that?

A. No, it doesn't, sir. Those work papers are the actual work papers that we have and develop as far as they go. The only addition that we made to it at the time we sent it out was to key it out so that it would be helpful in following the procedure. Now, obviously, underlying certain of the information which we used there are letters or documents of a miscellaneous nature which we referred to.

Q. Could you have prepared the exhibits which accompanied your Exhibit 113 and 113 itself on the basis of Exhibit 115 only?

A. I don't see why not. The only other way, if you wanted to consider the work paper, would be Mr. Heywood's Exhibits JLH 5 and 6, which are, in effect, the start of it.

Q. I understand that, but taking into consideration Mr. Heywood's exhibits and the work papers that he furnished [fol. 1979] to you which underlay those exhibits, those papers, together with Exhibit 115, is all that was necessary to prepare the exhibits that you presented here? Is that right?

A. I would think so. Now, if that is not true, we would be glad to supply whatever is missing, because we hoped to give you the complete story.

Q. But, as I understand what you have said, whether you want to call it minor, or whether you want to call it miscellaneous, there are working papers that you did not furnish us?

Mr. Colgren: Well, Mr. Examiner, I can't understand the attitude of Mr. Bongartz in his line of questioning.

Mr. Bongartz: I don't care whether Counsel can understand my attitude, or not. I am cross-examining this witness. Now, if he has an objection I wish he would state it and give his grounds for it.

Mr. Colgren: All right. I object to the continuation of this line of questioning. If Counsel has a request to make of us for additional data, we will be glad to supply it.

Mr. Bongartz: Mr. Examiner, we are given a statement, a prepared statement, and some exhibits. According to the practice which we attempt to follow in these proceedings, we were supposed to get the witness's underlying work papers, by which, as I understand, is meant the source material that he used to put into these exhibits. Now, I want to know whether this Exhibit 115 included it. As I [fol. 1980] understand it, from what the witness says, he told me he chose not to include some statements in 115.

Mr. Colgren: Mr. Examiner, I want to object to the restatement of the witness's answer by Counsel Bongartz.

Mr. Bongartz: Well, the record will speak for itself as far as the witness's answer is concerned, Mr. Colgren.

Mr. Colgren: That is right.

Mr. Bongartz, do you have a request for additional data?

Mr. Bongartz: I am not making any request from you. I am asking this witness some questions and I would like to be able to continue.

Now, we have a question on the record. Could you read it, Mr. Reporter?

(Question read.)

The Witness: Yes. One of them, for example, is Mr. Heywood's letter. Perhaps you got a copy of that.

By Mr. Bongartz:

Q. Yes, we have a copy of that.

Anything else you have in mind?

A. Can I see those papers there and see what they amount to?

They are all miscellaneous. I can't recall them offhand.

(Papers handed to the witness.)

These are the tonnage figures, Mr. Bongartz, for the Erie.

Q. These are the only other papers you have reference to?

A. There are some with our own figures on it.

Q. You have no objection to giving them to us?

[fol. 1981] A. Well, these are the only copies we have.

Q. But you have no objection to giving them to us. We have the Erie here, and New Haven. Now, how about the Central?

A. This is our calculation of our import-export tonnage, and this is the underlying records at the lighterage agent's office, and so on.

Q. That may be very interesting. We ought to have that, too.

Exam. Boat: Anything that might be interesting, of course.

The Witness: I might say that we were not able to get that kind of detail from Pennsylvania when we asked for it.

Mr. Bongartz: Do you want, John, for me to look at this?

The Witness: You were very anxious to get duplicate figures.

Mr. Colgren: These are our only papers. We will produce them for you.

Mr. Bongartz: I mean, do you want me to take them now and give them back to you?

Mr. Colgren: How long do you want to have them?

Mr. Bongartz: Maybe overnight, and you can have them reproduced later.

Mr. Colgren: Do you remember what you gave him, Wes?

The Witness: No, I don't. I think we ought to make a list of what is in there: One might be lost somewhere.

Exam. Boat: Well, can we get on now with the rest of this examination, please?

By Mr. Bongartz:

Q. Mr. French, you also state that you are appearing [fol. 1982] on behalf of Respondent railroads who serve the ports of New York, Boston, and Portland, Maine.

Are you representing the Maine Central Railroad? Do you make that statement?

A. Well, that is a general statement with respect to the interests of those roads in our side of this proceeding. I am representing them to the extent that I am representing,

in particular, the New York people and, indirectly, their interests.

Q. Do I understand from what you have just said that you have been authorized, in presenting this testimony, to speak for the Maine Central?

A. No, not directly.

Q. Do you subscribe to the testimony put in by Witness Cole of the New Haven?

A. I have only read that in a cursory fashion.

Q. He is one of your associates, isn't he?

A. He is. I have no objection to his testimony whatsoever.

Q. Now, will you show me in my copy of Exhibit 115 where you made this adjustment with respect to inland terminal costs, carload platform expense? Would you point that out to me?

A. Will you refer, please, to page 4.

Q. Page 4 of your Exhibit 113, you talk about shore facilities down at the bottom of that page, the third line from the bottom.

[fol. 1983] Could you tell me what you mean by that?

A. This is on page 4?

Q. Yes. The third line from the bottom. Shore facilities.

A. Well, what I mean by that is the piers and yards and other auxiliary facilities on land.

Q. Then, to go on in that statement, you say that the addition of even large amounts of traffic would have a very moderate effect on the cost.

Now, what cost are you talking about? Is it in relation to these shore facilities that you have just defined for me?

A. Yes, primarily, that is, yes.

Q. In other words, the investment in the shore facilities themselves? Is that what you are talking about?

A. The investment in it and the maintenance of that investment, and so on and so forth.

Q. And this statement is in no way to be regarded as covering costs performed on land, such as unloading and loading, anything of that kind?

A. Only to a moderate degree. In the case of box car traffic, for example, where we are using fork lift trucks, and that kind of thing, I don't think it would apply very

particularly. In the case of handling open top equipment and unloading that with cranes, the chances are there wouldn't be as great a degree of variability there. It would vary some, of course, but it would be a more fixed proposition.

[fol. 1984] Q. Generally what you had in mind there was this investment in maintenance and shop facilities?

A. The maintenance, primarily.

Q. To the extent that additional traffic requires additional handling, there is additional cost connected with it? Is that right?

A. Yes, obviously.

Q. Who was the superintendent you talked to about variability of repair costs? What was his name?

A. His name?

Q. Yes.

A. Korker, K-o-r-k-e-r.

Q. Say that again.

A. Korker, K-o-r-k-e-r.

Q. And his title?

A. I am not sure now that I will recall it correctly, but I think it goes Superintendent of Marine Construction Repair. Now, I may be off on that to some extent. That will find him.

Q. And where is he located?

A. At the marine repair shop at Weehawken.

Q. The marine repair shop at Weehawken?

A. Yes. He is in charge of that shop.

Q. Is that the only shop that is used for the repair of New York Central floating equipment?

A. It is the only one we have. It doesn't do any under-[fol. 1985] water repairs.

Q. It only does above water?

A. Above water, that's right. Underwater, we have to go to Todd or Union Drydock, or somebody of that sort. We have no drydock. I mean outside the hull underwater. You can go below the water line within the hull, naturally.

Q. Do you know a Mr. A. F. Coon?

A. Yes.

Q. C-o-o-n?

A. C-o-o-n, that is correct, sir.

Q. Who is he?

A. He is now retired. He was—let's see, what was his title—research engineer, I think his title was.

Q. Did you have occasion to work with him?

A. I never worked with him on any project. I supplied him information on request from time to time.

Q. Do you know that he made a study in 1955 about the cost to the New York Central in the New York area?

A. That was the West Side New York study, covered the land operation and the piers on the west side of the river?

Q. I am afraid that you know more about it than I do. I am not a New York Central man. But I understand that Mr. Coon made a study in that year which developed against gross freight revenue of a million dollars, he had a cost of—

Mr. Colgren: Mr. Examiner, may I put a halt to this be-
[fol. 1986] fore it gets too far in the record?

Mr. Bongartz: I am trying to get the witness refreshed.

Mr. Colgren: Can we do it by the data in the document?

Mr. Bongartz: I don't have it. Mr. French acknowledges some kind of study was made. I am just trying to find out what it is about.

Mr. Colgren: Ask the witness if he knows.

Mr. Bongartz: I have, and he started to ask me about it. In response to his question I was telling what I know about it. Now you object.

I am trying to get together with the witness, Mr. Examiner.

Mr. Colgren: May I ask what you are reading from, Mr. Bongartz?

Mr. Bongartz: At the moment I am reading from page 58 of the record, marked Cross Examination of Witness Baylis, and I mentioned to Witness Baylis that it was reported in the New York Journal of Commerce, January 28, 1958, an article to the effect that the New York Central is making a study of its costs in the New York area, and then we got on this subject of Mr. Coon, and Mr. Baylis said that the Coon study was made on all types of traffic handled in the highly concentrated area of Manhattan. Now I want to know what this witness knows about the Coon study.

Mr. Colgren: The witness may answer, I think.

The Witness: All I know about the Coon study is it was [fol. 1987] directed primarily against finding the cost of our freight line at Manhattan Island and any contribution that line was making to our system revenues.

By Mr. Bongartz:

Q. What was the result of the study, Mr. French?

A. I don't know that it was ever finally decided.

Q. You never had a conclusion?

A. It really never did, because it was challenged within the company by a number of people, and I don't think there was ever any final conclusion reached.

Q. Now, what about this Nash study that you say you are not participating in? That is going on, is it?

A. That I can't answer you, Mr. Bongartz. My knowledge of that is completely sketchy. I merely know of its existence. Whether it actually is continuing or is all over with and a dead duck, I don't know.

Q. Well, in '56, I understand your testimony, your position was created. Is that right?

A. Well, the title was changed.

Q. And haven't there been any efforts as to coordination between the different departments of your railroad with respect to the subject of cost finding?

A. Well, all I can say in answer to that is that we were not asked to participate in these studies in any way, at least not in this particular study. Now, whether that constitutes no effort—

[fol. 1988] Q. Possibly not. But where you undertake as a cost finding man to examine and analyze Mr. Heywood's cost exhibits having to do with the cost of marine operations and terminal operations in the New York Harbor, wouldn't it occur to you that there were some other studies made within the walls of the New York Central that might give you some ideas?

A. Well, no.

Mr. Colgren: Mr. Examiner, I must object to that question. In fact, I don't understand what Counsel Bongartz is looking for.

Mr. Bongartz: I don't know that I have to disclose to Mr. Colgren what I am looking for. This is not direct examination, Mr. Examiner, it is cross examination. Now, I think that my line of inquiry is perfectly proper.

Mr. Colgren: Well, if Mr. Bongartz is trying to indicate to me as the counsel of this witness that I chose the wrong witness, I think that is slightly irregular.

Mr. Bongartz: I am not suggesting that, Mr. Colgren.

By Mr. Bongartz:

Q. And is your answer the same, Mr. French, when I ask you whether it would not have been appropriate, in preparing your testimony, for you to have reviewed the study that was made by the New York Central and other New York Harbor railroads in 1955 having to do with the question of possible coordination and consolidation of marine facilities?

[fol. 1989] Mr. Colgren: Mr. Witness, before you answer that question, will the Examiner entertain an objection?

The objection goes to the fact that the witness has already indicated he has never participated in those studies, and, furthermore, I think that it questions his conduct of the preparation of his testimony.

Mr. Bongartz: I think it certainly does, Mr. Examiner. I can't agree more. Here we have a cost witness of the New York Central Railroad. He is undertaking, if you please, as I understand it, to try to tear apart some cost evidence that was put in by Mr. Heywood. Now we have a situation where there was available to him in his own organization various studies that were made over in that area. It makes no difference whether he participated in those studies or not. My inquiry of him is as to how far he went to familiarize himself with this subject of costs at New York Harbor before he undertook this destructive testimony in his Exhibit 113.

Mr. Colgren: Mr. Examiner, I was interrupted. I realize I speak too slowly sometimes. But I am very glad that Mr. Bongartz recognizes, at least, that Mr. French's testimony is destructive of—

Mr. Bongartz: Purportedly destructive.

Mr. Colgren: You didn't say that. Destructive of Mr. Heywood's exhibits, and, as a matter of fact, that is entirely the sole subject of the Witness French testimony [fol. 1990] here, the Witness Heywood cost study and a restatement thereof and various critical analyses made of the subject. I fail to see the pertinency of the question by Mr. Bongartz.

Mr. Bongartz: This Exhibit 113 goes to all sorts of things. First he undertakes a certain bases to make changes in Mr. Heywood's figures, and then, if you please, he embarks on unlimited horizons, where, if he could have gotten into those everything would have been just destroyed completely. He has gotten into subjects which I am inquiring into here. Yet when I inquire into what this witness's background is, what he has undertaken to familiarize himself with before making statements which I am going to question later on, I hear objections.

Mr. Colgren: Mr. Examiner, if there is a question before the witness, I think I will withdraw my objection.

Mr. Bongartz: I didn't hear that.

Mr. Colgren: I withdrew my objection.

Mr. Bongartz: Do you remember the question?

The Witness: No. I would like to hear it again, please.

(Question read.)

The Witness: Well, I don't think it would have been appropriate to do that because the matter at hand here is criticism or an analysis of the protestant lines' cost exhibit at New York, and to go off into ramifications of other studies would merely have muddied the water so that [fol. 1991] we would have had a prolonged effort on our hands. I don't think it would be germane to this particular matter.

By Mr. Bongartz:

Q. One of the criticisms which I understand you attempt to make of Mr. Heywood's study is that it doesn't cover enough traffic.

Isn't that right?

A. That is one of my criticisms, yes.

Q. And the amount of traffic that it doesn't cover is what, about 70 per cent it does not cover?

A. Do you mean of the New York Harbor?

Q. Yes.

A. Well, we have some figures here that indicate it possibly is that, yes.

Q. And it is my understanding that you don't think that 30 per cent, let's put it this way, that 30 per cent of the traffic in New York Harbor, which traffic includes that of the Pennsylvania Railroad, Baltimore and Ohio, and Central Railroad Company of New Jersey, is representative of the entire operation of the harbor?

A. Well, you see, the difficulty with that is that the Pennsylvania-Jersey Central-B&O traffic, for example, has nothing on this ship-to-shore operation, which we know exists in the harbor.

Q. Is that the only reason you have—

A. It has a disproportionate amount of lighterage as [fol. 1992] opposed to the other roads for which we had traffic figures in the terms of tonnage. There are those various questions about it.

Q. What else?

A. Well, car floatage is an area of difference. And, as I pointed out before, trucking in lieu of lighterage, on the basis of tonnage, didn't look particularly—

Q. You have more car floatage.

A. Well, it doesn't matter whether you are high or low, it is just that you are not in line. And then you have different types of traffic, commodities, that are handled by one road and are not handled by another road particularly, except occasional movements, and so on and so forth. So that to take a group of three roads, you can't necessarily compute it, but you have, in my opinion at least, a cross section of the whole harbor operation.

Q. When you are considering whether or not the traffic of the three roads and the method in which that traffic was handled was representative, wouldn't it have been of some assistance to you to find out what the other railroads do there in New York Harbor?

A. I did. I found out from the standpoint of the volume of their tonnage what they were doing with respect to lighterage and car floatage and that sort of thing.

Q. All that you did there, Mr. French, was just obtain a division trafficwise of how it was handled, that's all you [fol. 1993] obtained.

A. That's right.

Q. You didn't go into the operations of those roads over there, did you?

A. No, sir, I did not. And I didn't intend to do so.

Q. If you looked at the 1955 coordination study, maybe you could have enlightened yourself.

A. Maybe I could have, but, at the same time, that wasn't the subject matter we were dealing with. We were restating Mr. Heywood.

Q. Yes. But you talk about these operations of these three railroads, the Pennsylvania, the Central of Jersey, and the B&O as being unrepresentative of operations in the New York Harbor, and all I can get from questioning you is that, because the distribution of the traffic might be a little bit different percentagewise, that brings about your conclusion.

A. And commoditywise.

Q. Now, what has happened to those statements that you were going to let me have and I was going to give you a receipt for?

(Papers handed to Mr. Bongartz.)

Are the New York Central's figures included in here?

A. Yes, you will find them.

Q. When did you get them?

A. Oh, during the winter some time.

Q. Did you have them before—

[fol. 1994] A. This one came in on March 11. That's the New Haven. The Erie didn't date theirs, but it would be about the same time. And the New York Central's would be about the same time, although it is not dated, either, I guess.

Q. Back in the winter?

A. March 11th.

Q. What was the source of the New York Central's figures you used? Where did you get them?

A. They came from the records in the office of the lighterage agent. Incidentally, the same records which are used to support this annual vessel operation report that we had some discussion about at the previous hearing.

Q. Does the traffic department have access to those records?

A. Well, I am sure they have when the company has access to them. They are not generally published. You have to ask for them.

Q. Well, would you get the information regarding this wheel-to-keel traffic out of the lighterage agent?

A. It is in here. You have it right there, Mr. Bongartz.

Q. You got it from him, did you?

A. Oh, sure.

Q. Did you hear Mr. Baylis's testimony?

A. No, sir.

Q. Do you know that Mr. Baylis, when I asked him for a breakdown, said he couldn't give it to me?

[fol. 1995] A. Well, he probably believed he couldn't, because it is something you have to go clear back to the lighterage agent to get. He may not have been aware of such a breakdown. You remember how it came as such a surprise to all of us about this breakdown of this vessel operation report. We hadn't heard of it, we weren't very familiar with it. We finally discovered we were all making the thing.

Q. On the 17th of February I asked him for that and he couldn't give it to me.

A. Well, you have got it now in any case.

Exam. Boat: Shall we desist?

We will adjourn until 9:30 tomorrow.

(Whereupon, at 4:45 p.m., the hearing was adjourned until 9:30 a.m., Wednesday, June 18, 1958.)

[fol. 1996]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 6615

Fourth Section

Application No. 32204

Met, pursuant to adjournment, at 9:30 a.m.

Before:

Marion L. Boat, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 1998]

PROCEEDINGS

Exam. Boat: Come to order, please, gentlemen.

I understand that Mr. Price has a witness that he would like to get rid of this morning, and it is agreeable, I understand, to counsel.

Mr. Foley: I call Mr. Pisterino to the stand.

LEO PISTERINO was sworn and testified as follows:

Direct examination.

Mr. Foley: Mr. Examiner, I have here a verified statement of Leo Pisterino which I would like to have marked for identification.

Exam. Boat: Yes. That will be No. 117.

(Intervenor's Exhibit No. 117, Witness Pisterino, was marked for identification.)

By Mr. Foley:

Q. Mr. Pisterino, would you please state your name?

A. Leo Pisterino.

Q. And your address?

A. 40 Central Street, Boston.

Q. And I hand you an exhibit which has been marked for identification No. 117. It states on the face of it it is your verified testimony.

Is that your testimony, Mr. Pisterino?

A. It is.

[fol. 1999] Q. Is it true and correct to the best of your knowledge and belief?

A. It is.

Mr. Foley: You may cross-examine.

Cross examination.

By Mr. Price:

Q. Mr. Pisterino, you indicate, although your company is located in Boston, you solicit business throughout the country.

Could you indicate the approximate size of your company?

A. Twenty people.

Q. Well, perhaps in terms of annual volume, or something like that?

A. About $120,000.

Q. And where are your accounts generally located?

A. Primarily in New England and New York.

Q. Do you know to and from what areas the rates involved in this proceeding are published?

A. It refers to the C.F.A. territory.

Q. Now, do you do any business with firms located in C.F.A. territory?

A. Not enough to matter.

Q. A very small amount?

A. A very small amount.

Q. Now, you state that you handle more of your tonnage through ports other than Boston than through Boston.

[fol. 2000] Would you state what other ports you use?

A. Primarily the Gulf ports.

Q. Gulf?

A. Gulf.

Q. And where does that traffic originate?

A. In the lower Gulf area.

Q. In other words, the States of Alabama, Louisiana?

A. Yes. Arkansas.

Q. Arkansas.

I believe you stated a while ago that your principal accounts were located in New York and New England?

A. That's right.

Q. But you do have some accounts in the lower Gulf?

A. Primarily those are accounts that is merchandise purchased from New England that is shipped out of that area.

Q. Does your company ever use the Port of New York?

A. Yes, sir.

Q. To a substantial degree?

A. No, I wouldn't call it decisive. We use it frequently, but not decisive.

Q. How would you compare your use of New York with the use of Boston?

A. Oh, maybe five per cent of Boston.

Q. What other North Atlantic ports do you use, if any?

A. We don't use any as a regular thing, only when we are [fol. 2001] called upon to do so.

Q. So then, of your New York and Pennsylvania traffic, am I correct in understanding that about 95 per cent goes through Boston and five per cent through New York?

A. My New York traffic, I don't quite follow your question.

Q. Well, as I understand, all of your traffic except that originating in the lower Gulf, originates in either New England or New York. Is that correct?

A. Yes, sir.

Q. Now, taking that latter traffic as a whole, what percentage would go through New York and what percentage through Boston?

A. I would say 95 through Boston, five per cent New York.

Q. Does your company prefer to use Boston?

A. Yes, sir.

Q. Why is that?

A. To give us better control.

Q. Do you have branch offices in New York?

A. No. We did have for some time.

Q. When you do use the Port of New York, therefore, it is necessary to pay some other forwarder?

A. We do it two ways. If it is a relatively simple shipment, we will do it directly, mail our papers to the steamship line, they will file the bill of lading and export declaration for us, or if it is complicated, we will work through one of the brokers in New York.

[fol. 2002] Q. But otherwise it is necessary for you to, in effect, split your commission with a New York broker?

A. We pay him for his services.

Q. Yes.

Now, can you point to any business that your company has lost as a result of the lack of parity in rates?

A. No, sir.

Q. As a matter of fact, as I understand it, all of your traffic except the lower Gulf traffic originates in non-differential territory. Isn't that a fact?

A. I would say that is a fair appraisal.

Q. So, that being the case, your company would not be affected one way or another by the outcome of this proceeding?

A. Well, I think that it definitely affects the future of our company.

Q. In what way?

A. If we can't expand our business into C.F.A. territory, then we have no place to go in Boston.

Q. In other words, you hope, as a result of this proceeding, to be able to expand your activities into C.F.A. territory?

A. We expect to.

Q. Now, what traffic did you have in mind that you might be able to obtain if parity rates were established?

A. No special. All of it, or as much as we can attract.

Q. But you have no particular traffic in mind that today [fol. 2003] might be moving through Philadelphia or Baltimore or Norfolk that otherwise would move through Boston on parity rates? You have no particular traffic in mind?

A. No, sir.

Q. You state, I believe, at page 4 of your statement, "The influx of more, and more diversified cargoes, which is bound

to result from rate parity from and to Differential Territory, will substantially alleviate this present handicap of the port of Boston."

Will you indicate, if you know, what North Atlantic port handles most of the traffic in the import-export trade at the present time?

A. I would say New York.

Q. Now, if parity in rates were a primary factor in the selection of a port, why, in your opinion, has Boston not had greater success in competing with New York than it has?

A. Well, actually our level of our steamship service is not available and we need the extra tonnage in order to induce the steamers to come into Boston.

Q. In other words, you think that frequency and quantity of steamer sailings is an important factor which influences the selection of the port by a shipper?

A. Definitely.

Q. You also state, I believe, at page 4 of your statement and at the top of page 5 that the quality of the service and cost rather than size count the most, referring to the for-
[fol. 2004] warder operation.

Isn't it a fact that the large forwarders with large resources are able to give a lower competitive price on a particular piece of business than a smaller company?

A. That is not so.

Q. It is not so.

Isn't it a fact that a large forwarder has the means of offering more diversified services than a small company?

A. Not in my own experience, by no means.

Q. Isn't it a fact that a large company can offer more specialized service because of the possibility of having, say, one man in their organization who specializes in a certain phase of activity?

A. It is possible, but practically it is not a factor.

Q. Do you have any branch offices at all, Mr. Pisterino?

A. No, sir.

Q. Does your company specialize on any particular type of traffic?

A. No. General commodities.

Q. Now, you state at page 6 that you do not think that

the head offices of most steamship companies are in New York means that New York gets space preference.

Are you generally familiar with the operation of steamship lines?

A. Yes, I am.

[fol. 2005] Do you have any idea how much it costs to operate a freighter per day?

A. (Shakes head affirmatively.)

Q. How much for a C-2, for example?

A. A C-2?

Mr. Foley: That I object to without clarification. What kind of a freighter?

Mr. Price: C-2, I said.

The Witness: $2200.00.

By Mr. Price:

Q. In view of that rather substantial cost, in your opinion, would it not be good business for a steamship company to concentrate as much as possible on one or a few ports rather than spread around over many?

A. Well, I think if they did that they would find themselves out of cargo at some particular part of the year. They have to go up and down the range in order to keep those boats going.

Q. Assuming that they can obtain full cargoes at one or perhaps two ports, do you agree it is good business to concentrate those?

A. Are you talking about tramp service?

Q. I am talking about any freight service.

A. Well, it might be the most economical method, but I do not think it would be good business.

Q. And why is that?

[fol. 2006] A. Because I think that a given port will reach a point where they don't have sufficient volume and if they sail to other ports they'll be out of business.

Q. Well, that is your conception of what should be done. What, as a matter of fact, is done in that regard?

A. Well, I think that the vessels do range up and down, as a matter of fact. They make New York, Baltimore, Boston, Philadelphia.

Q. You haven't seen the exhibits in this case which show the percentage of the steamer sailings which call only at New York, for example, have you?

A. No.

Q. Are you saying that the steamship operators are making a mistake in not calling at Boston more than they do?

A. No. There isn't sufficient cargo to bring them in there. That is why we would like to get this parity.

Mr. Price: Thank you, sir.

Mr. Walker: May I ask one question, Mr. Examiner?

Cross examination (Continued).

By Mr. Walker:

Q. Do you handle any business by truck?

A. Do you mean are we in the trucking business?

Q. I meant has any of your traffic moved into Boston by truck?

A. Oh, yes, yes.

Q. What percentage?

A. I would say our own.

[fol. 2007] Q. Any of the traffic that you handle?

A. Yes, our own.

Q. That is what I am talking about.

A. I would say that a very substantial portion.

Q. Half of it?

A. Percentagewise, I couldn't say exactly.

Q. More than half?

A. I would think so.

Q. Are your truck rates to Boston lower than to New York?

A. From certain points.

Q. Points where it moves?

A. Yes.

Mr. Walker: That is all.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Foley: No further questions.

Exam. Boat: You are excused.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Foley: Mr. Examiner, may I offer Mr. Pisterino's testimony now?

Exam. Boat: That will be received as Exhibit 117.

(Intervenors' Exhibit No. 117, Witness Pisterino, was received in evidence.)

Mr. Foley: Perhaps this would be an appropriate time, [fol. 2008] Mr. Examiner, for me also to offer the verified statement of William J. Hartney, Vice-President of The National Shawmut Bank of Boston. Cross examination was waived of Mr. Hartney.

Exam. Boat: Let that be identified first as Exhibit 118.

(Intervenors' Exhibit No. 118, Witness Hartney, was marked for identification.)

Mr. Foley: Now we offer Exhibit No. 118, Mr. Examiner.

Exam. Boat: Yes. If there is no request for cross-examination of Mr. Hartney, the exhibit is received.

(Intervenors' Exhibit No. 118, Witness Hartney, was received in evidence.)

Mr. Colgren: Mr. French, will you resume the stand, please.

WESLEY F. FRENCH was recalled and resumed his testimony as follows:

Cross examination (Continued).

By Mr. Bongartz:

Q. Mr. French, in your statement, Exhibit 113, in connection with repairs of floating equipment, you state that you have considered that additional traffic which uses such

existing equipment would occasion very little additional expense.

What did you have in mind when you used the words "additional traffic"?

A. Well, I had this in mind. I gave some examples there I thought.

Q. Do you mean over here on the next page?

[fol. 2009] A. No, no.

Q. I was looking at page 5. I was referring to the material in the top paragraph, "In connection with the repairs to the equipment, I have considered that additional traffic which uses such existing equipment would occasion very little additional expense."

A. Well, I think that is explained on page 6.

Q. That is what you had in mind?

A. That is what I had in mind.

Q. But I still would like to have some conception of what you meant by "additional traffic."

Just how much did you have in mind?

A. Let us take, as an example, suppose we have a car float and we have five cars in it. Now, we put seven or eight or ten cars on it, the variation of repairs to that car float are not going to be very appreciable due to the additional cars that you place on the float. Again, let us take a lighter. Let's assume that the lighter has a hundred tons on it, we are going to double that to 200 tons. Again we are not going to get a considerable increase in the repairs, repairs due to the addition of the additional 100 tons would be relatively modest.

Q. That assumes the situation that you describe, just putting additional cars on a car float and additional tons on a lighter, is that right?

[fol. 2010] A. In other words, it is a more effective utilization of your equipment, which is a desirable goal.

Q. This Mr. Korker that you talked with, superintendent of marine construction repairs at Weehawken, am I right in assuming that the duties of his position are the repairs of New York Central equipment?

A. Floating equipment, yes.

Q. Floating. That is all he does?

A. That is his sole job.

Q. He supervises, if you please, your shipyard facilities?

A. That is correct.

Q. He has nothing to do with the operation of lighters and car floats and tugs?

A. No. I wouldn't say he hasn't anything to do with the operation. He does keep charge of the fueling of the boats, in addition to his repair.

Q. He has nothing to do with their operation?

A. No. He hasn't dispatched them.

Q. And he is not concerned with traffic matters?

A. No, no. He is a repair superintendent of floating equipment.

Q. In connection with this study that you made, did you talk to anybody else besides Mr. Korker?

A. Well, Mr. Bongartz, we didn't make any study. All I did when I saw the percentage of 10 per cent, which is [fol. 2011] 28300 percentage, and also is a percentage used for that item in certain other studies of out-of-pocket percentages, I asked Mr. Korker's opinion as to whether he thought that kind of a figure for out-of-pocket ratio for repair of floating equipment was a reasonable ratio. His opinion was that it was reasonable.

Q. Did you ask anybody else the same question?

A. No, sir. He is the most qualified man we have in that particular phase of the business.

Q. Aside from that statement, it is clear that Mr. Korker is the only one you talked to?

A. That is correct.

Q. And aside from the matter of repairs to equipment, did you talk to anybody else in the New York Central Railroad before preparing this testimony outside of your department, outside of the legal department?

A. With respect to the out-of-pocket ratios?

Q. With respect to your testimony, the statement that has been marked Exhibit 113.

A. I don't recall that we did. Of course, I did discuss some phases of it with Mr. Keefe.

I would say that that is all to the best of my recollection.

Q. Does the New York Central have a lighterage agent?

A. Let me modify one thing further. We did visit Weehawken and inspect facilities there, familiarize ourselves

with the type of operation of the piers and the other harbor [fol. 2012] operations there, in the company of Mr. Harris, our lighterage agent at Weehawken, but we did not discuss the testimony as such, nor any of our exhibits.

Q. Is that Walter H. Harris?

A. That's right.

Q. Getting back to Mr. Korker, as I understand what you said yesterday, age and elements are the factors that have to do with repairs.

Is that right, they are the primary factor?

A. Mr. Korker mentioned those as being particularly important, yes.

Q. Damage?

A. Damage, yes.

Q. Damage comes from use, doesn't it?

A. Damage can come from use, it can come from merely the movement, let us say, of a barge or a lighter, regardless of the amount of traffic on it, or it can come from the exposure to damage due to the number of tons of traffic or cars placed on the car float.

Q. In other words, damage can occur through the volume of the lading?

A. To some extent it can. Primarily it does not, to my understanding.

Q. And the other respect which damage occurs is through the operation of the piece of equipment?

[fol. 2013] A. Yes, or the action of, well, say they have ice in the river, or something like that, or storm conditions of some kind sometimes will result in damage.

Q. Well, the more use to which that equipment is put, the more it is exposed to the hazards of marine operation in New York Harbor? Is that correct?

A. That is true.

Q. And that is where damage occurs?

A. Primarily.

Q. Are you familiar with your admiralty claims?

A. No, sir.

Q. Now, let's talk about the goal of effective utilization of equipment.

Whose goal is that? Is that your goal?

A. No. I think it is a goal of any operating man to use

his equipment as effectively as he can and put the most tons on a unit or the most cars on a float.

Q. Are you familiar with the requirements of export-import traffic in the Port of New York?

A. That is a broad statement. Just what do you mean?

Q. Well, you at least have been in attendance at this hearing, Mr. French, haven't you?

A. To some extent.

Q. And haven't you heard something about the requirements placed on the railroads by virtue of this import-[fol. 2014] export traffic at the Port of New York?

Mr. Colgren: I think you still should clarify that, Mr. Bongartz.

Mr. Bongartz: Let's see if the witness understands it.

The Witness: I don't understand what you mean by the requirements. There are all sorts of requirements. What do you have reference to?

By Mr. Bongartz:

Q. Well, let me ask you this. In connection with the preparation of this testimony, did you undertake to familiarize yourself with the operation involved at New York in the handling of export-import traffic by the New York Central Railroad?

A. Not in detail, no. I wasn't making a study of the New York Central Railroad.

Q. You weren't making a study of the New York Central Railroad, Mr. French, but you undertook in this statement of yours, Exhibit 113, to talk about variability, what additional tons would do. It would seem to me that when you are making statements like that, you might have familiarized yourself with the requirements of this particular traffic which we have under consideration here.

And you didn't do that?

A. I don't know what you mean by "requirements" so I can't say whether I did it or didn't do it.

What do you mean by "requirements"?

[fol. 2015] Q. You will agree with me that most of the export-import traffic at New York, regardless of the railroad, is lighter?

A. A great part of it, yes.

Q. The majority of it?

A. The majority of it.

Q. The majority of it is lighter?

A. Yes.

Q. In fact, the statement that you produced yesterday, your working papers showed that, as far as your group of railroads is concerned, Respondent railroads, your railroad was the only one that had any so-called ship-to-keel—I mean wheel-to-keel traffic?

A. Of that group, yes.

Q. Do you know what demands are placed on the operation of lighters in New York Harbor on account of export-import traffic?

Mr. Colgren: Mr. Examiner, I think that needs clarification, too.

Exam. Boat: Yes. These are all sort of vague.

Mr. Bongartz: Well, Mr. Examiner, let me say this.

Exam. Boat: Well, I think we ought to get questions in here, Mr. Bongartz.

Mr. Bongartz: I am getting questions in, if I may say so.

Exam. Boat: You have been making several statements here and I haven't interrupted.

Mr. Bongartz: I thought that possibly the general ques-
[fol. 2016] tions, I might spark a glimmer of light in the witness' mind, but apparently I haven't.

By Mr. Bongartz:

Q. Mr. French, are you familiar with the permit system in New York?

A. No, sir.

Q. With respect to the delivery of export-import traffic?

A. No, sir.

Q. The delivery of I guess it is export traffic.

Are you familiar with the requirements of vessels in New York for particular traffic at the particular time so that they may load certain parts of the vessel?

A. Do you mean do I know do they do that?

Q. Yes.

A. Yes, I know they do that.

Q. Do you know about the permits in connection with that?

A. I don't know about the permits. I know there are such things. I don't know anything about their details.

Q. Do you know that at the present time lighters are loaded to much less than capacity?

A. Yes, sir.

Q. But, nevertheless, lighters, because of that, are not retired, are they?

A. That is correct. Apparently so.

Q. Well then, would you say that your management is not achieving the goal of efficiency that you mentioned a [fol. 2017] little while ago?

A. We are trying to achieve it. We are doing our best to police the loads put on those lighters and the utilization of them. We have a daily report on them.

Q. Is your management resisting this permit system?

A. I don't know as it is resisting the permit system, because I don't know enough about the permit system to say, but we are trying to get heavier loads on our lighters wherever we can.

Q. Do you know whether the average load of lighters over the years has changed appreciably with the ups and downs of traffic? Have you made any inquiry into that?

A. I would say that today, compared with two or three years ago, we are achieving on the average a little better loading of lighters than we had before.

Q. Could you give me a figure on that?

A. No, I can't. I don't have that information with me.

Q. Do you know what the average lighter capacity is in New York?

A. I don't recall. It is in our annual report.

Q. Do you know what the average loading of a lighter is at the present time in New York?

A. I didn't bring those figures with me. I have them all, but I don't have them here.

Q. Are you familiar with the practice of split deliveries in connection with export-import traffic?

[fol. 2018] A. I know that they make such deliveries, yes.

Q. And I assume that you would know that this lighterage traffic in New York requires the servicing of vessels at

scattered points throughout the harbor within a rather large lighterage limit?

A. That is correct.

Q. Would I be correct in saying that your marine facilities, docks, cranes, tugs, lighters, are primarily used in the handling of export-import traffic?

A. I would imagine that would be the preponderant use, yes. Of course, we do have a great deal of car float traffic, too. I guess that would be preponderant.

Q. Wouldn't all these things that we have been just discussing, Mr. French, have a considerable bearing on this matter of variability?

A. It could have.

Q. Wouldn't you say that it would have?

A. Variability with respect to the repair of marine equipment?

Q. No. I am talking about variability generally.

A. Oh. You mean variability of traffic and variability as to whether it is lighterage or car float?

Q. Costs.

A. Total costs, sure.

Q. Now, as I understand it, what you did in making this restatement was to go right down the line and use these [fol. 2019] various tonnage figures which were referred to yesterday, which came out of this Senate Document No. 63? Is that right?

A. That is correct.

Q. Do you know the date of that document?

A. It is on there. 1943, June 8th.

Q. 1943?

A. Yes, sir.

Q. Do you know whether the Commission's Cost Finding Section has used these percentages in this document, Senate Document No. 63, since that time?

A. These percentages were used at the time the rail line Form A studies were made on the basis of individual percentages. And since the time when the overall 80 per cent was determined, why, the use of the individual percentages has been abandoned as a matter of facilitating the—

Q. How far back does that go, Mr. French?

A. Well, I don't recall the date exactly. It is some few years, probably the early 1950's, at least, maybe before that.

Q. Are you familiar with the so-called Small Shipments case, I think it is Docket 29555?

A. I have heard of it. I am not familiar with it.

Q. Do you know that the Commission's Cost Section changed its use of percentages in that proceeding?

A. Oh, it may have. I don't know.

Q. On this page 34 of your work sheets, Mr. French, on [fol. 2020] the wheel-to-keel, to get this clear in my mind, this tonnage that you show wheel-to-keel is only New York Central, is that right?

A. That is right.

Q. Is all import?

A. That was import. Maybe we should have it read "keel-to-wheel."

Q. And that concerns only bauxite, chrome, manganese, and bananas? Is that right?

A. Bananas I believe were not included in that. I may be mistaken. I would have to review those papers.

Q. Well, the papers you loaned me show quite a lot of bananas.

A. Yes. I wondered if they are included there. I am not sure.

Yes, it included bananas.

Q. Anything else?

A. Well, the ores you have mentioned.

Q. Yes, that I mentioned.

A. Yes.

Q. That was all at Weehawken?

A. Yes, sir.

Q. That is the only wheel-to-keel traffic, import-export traffic that the New York Central handled in this period?

A. That is right.

Q. You didn't have any wheel-to-keel movement?

[fol. 2021] A. We hadn't at Newark?

Q. Did you?

A. No. None was reported.

Q. As a matter of fact, you lightered over to Port Newark, didn't you?

A. There is some lighterage, yes.

Q. At page 8 you talk about trucking in lieu of lighterage, some adjustments that you made in Mr. Heywood's exhibits in that regard.

Are you aware of the fact that Mr. Heywood's cost showing omitted the cost of the trucking element, trucking in lieu of lighterage? Did that come to your attention when you were preparing this restatement?

A. It did with respect to the Pennsylvania. I believe the Baltimore and Ohio included their trucking cost.

Q. But you made no attempt, in this brief statement, to take care of that inadvertent omission?

A. Well, I wasn't really in a position to do it very well inasmuch as Pennsylvania made that adjustment.

Q. Well, your interest, then, didn't go to that kind of correction?

A. Well, I took Mr. Heywood's exhibit as it stood. I didn't know for what reason he omitted it.

Q. Well, it should be in, shouldn't it?

A. I would think it should, yes.

[fol. 2022] Q. At the same page, in your Item 6 you talk about adjustment of the Pennsylvania Railroad port costs for box and open top cars at Jersey City and Greenville, and there you say that in computing the marine costs associated with the movement of box cars and open top cars to or from Jersey City and Greenville, the Pennsylvania combined costs for both facilities, and then you say that you made a restatement whereby you separated the facilities.

A. It's two ways of doing it, Mr. Heywood's way and mine.

Q. Now, in doing that, you just used the figures that Mr. Heywood had in his exhibits?

A. Yes, sir. In his work sheets.

Q. Did you, in doing that, undertake to concern yourself with the respective percentages of use at Jersey City and Greenville as between export and import and other types of traffic?

A. No. We followed exactly the same method as Mr. Heywood had followed.

Q. You took his figures?

A. Used his figures. The only thing was we computed

Greenville separately and then computed Jersey City. Other than that, there was no change.

Q. I see.

Now, I show you a statement titled "Pennsylvania Railroad Service Minutes & Related Percents By Classes of Marine Equipment for Total Traffic and Foreign Lighter-[fol. 2023] age Traffic New York, N.Y.," which makes a separation as between barges and lighters with respect to the service minutes of marine equipment. That is, the use of it. And I ask you whether you have ever seen that?

A. I don't recall this.

Q. That was never brought to your attention?

A. I don't recall it. I wouldn't say it was never brought to my attention, but I have no recollection of it.

Mr. Bongartz: May the record show, Mr. Examiner, that under date of April 28th, 1958, I addressed a letter to Mr. Colgren, and this letter was in response to Mr. Colgren's letter of April 22nd, 1958, in which he asked for certain information. In this letter, or with this letter I inclosed a statement that I just showed to Mr. French. I called attention to the fact that this statement shows that a clerical error resulted in an understatement of our costs with respect to the item of service minutes and related percents.

Specifically, the statement shows that we used a percent of 5.67 at Jersey City, which should have been 21.64.

I would like to offer this in evidence. I don't have copies, but I will supply the parties with copies. Mr. Colgren has a copy and you have, sir, but I will undertake to supply copies to all counsel.

Exam. Boat: Off the record.

(Discussion off the record.)

[fol. 2024] Exam. Boat: On the record.

The statement to which Mr. Bongartz refers may be identified as Exhibit 119.

Mr. Colgren: What was the date of this letter, please?

Mr. Bongartz: April 28th. That looks like the statement right there you have in your file, Mr. Colgren.

Mr. Colgren: Yes, that's right.

(Protestants' Exhibit No. 119, Counsel Bongartz, was marked for identification.)

By Mr. Bongartz:

Q. Mr. French, if you had had this statement available to you when you were making this restatement of Mr. Heywood's cost exhibits and you had used the information shown in that statement, it would have resulted in increasing the cost, would it not, on this traffic that we have under consideration?

A. It possibly would. It looks on the face of it as though it might. It is hard to evaluate it sitting here.

Q. It is at least a higher percentage, isn't it?

A. That is right.

Q. When you apply a higher percentage you get a higher cost?

A. Other things being equal, yes.

Q. All right.

Will you turn to page 10 of Exhibit 113.

At the bottom of that page you say that even your restatement of costs is substantially overstated.

[fol. 2025] Do you see what I am referring to there?

A. That's right.

Q. What do you mean by that?

A. Well, I mean by that that there are still many other adjustments, some of which I have later enumerated, and others that might have been found if you had gotten into a further study, which would operate, I think, to reduce the costs as shown in Witness Heywood's exhibits.

Q. It is one thing to talk about reducing costs and it is another thing to talk about reducing them substantially.

A. All right, substantially.

Q. That is your word?

A. Yes.

Q. Do you have that ten cents on icing in mind when you use that word?

A. No, not that particularly.

Q. That is one of the items that you referred to later on in support of this.

A. Well, that is one of the items. There are actually ten

items that I mentioned there, and that particular one on icing is one of the less important ones.

Q. You didn't undertake to translate that ten cents into this restatement?

A. No, no, I did not.

Q. It was sort of a loss, wasn't it?

[fol. 2026] A. It wouldn't have amounted to very much. Mr. Heywood, I think, furnished some estimate on the stand as to the possible effect of that.

Q. Now, as I read your statement, you say that these other things that you are referring to later on here with respect to which you made no changes in your restatement, that you didn't have the necessary information and you couldn't determine what the effect of such adjustments would be.

Isn't that right?

A. That is right.

Q. So we have to read that whole paragraph in the light of those statements that I just referred to, don't we?

A. We have to read that paragraph in the light of possible areas in which there would be substantial reductions in costs if we had the information.

Q. But you don't know, do you, Mr. French?

A. No, because we don't have the information. But we can—

Q. All right. That's fine. That answers my question.

A. But we could reasonably suspect there would be.

Q. Mr. French, over at page 12, the third line from the bottom of the page, do you see that figure of 3,135 loaded import-export cars?

A. Yes, sir.

Q. Where did you get that?

A. That is from Mr. Heywood's work sheet, as we call it, [fol. 2027] D-8. I don't know whether that would identify it in your record, or not, at the moment.

Q. I think we are getting into that later on.

A. Yes.

Q. Why do you think that the Pennsylvania has traffic moving through Port Newark?

A. Because of its location. Because it serves Port Newark.

Q. It does?

A. It is my understanding it does.

Q. That is your understanding.

If I understand your testimony, direct transfer from railroad to vessel is less costly than a marine movement.

A. Yes, sir.

Q. There is no question about that in your mind?

A. No, sir, not under ordinary conditions, in any case.

Q. You don't share the answers that Mr. Baylis gave me in his testimony?

A. I wasn't present when Mr. Baylis gave you answers.

Q. I am willing to take yours, but I could never figure out his.

Mr. French, why didn't you make a study of the costs of handling export-import traffic by the New York Central Railroad at New York?

A. Why didn't I make it?

Q. Yes.

[fol. 2028] A. For the simple reason that I had no occasion to make such a study, in my opinion. All that was necessary in the premises here was to take the existing study which had been made by the protestant carriers and modify it as we thought it should be modified to correct certain differences and errors that we found, which we attempted to do.

Q. Well, were you the one—

A. We have one study in this proceeding for the New York area.

Q. Were you the one who determined what you should do in this proceeding in connection with costs?

A. I didn't do it solely or acting in a vacuum, or anything like that. I had a cost committee acting with me that acted in an advisory capacity and assisted me in that respect.

Q. That wasn't really my question, Mr. French.

What I had in mind is who determined that you should go no further than to just make a restatement of Mr. Heywood's costs?

A. I felt that a restatement of Mr. Heywood's costs would be quite adequate for our purposes and interest in this proceeding.

Q. Were you the one who made the determination?

A. I wouldn't say any one of us made the determination. We discussed the matter pro and con and came to an agreement, an agreement I was in favor of.

Q. Weren't you asked to participate in this proceeding by some other department?

[fol. 2029] A. Well, we are always asked to participate in a proceeding by our Law Department, yes.

Q. Yes. And isn't that true here?

A. Certainly.

Q. Did you tell the Law Department that you should not get into the matter of New York Central's costs?

A. No. We didn't say that at all. We merely discussed whether or not we should make a cost study of our own, or whether we could effectively present our case by the use of the existing cost study of the protestant lines, modified as we thought it should be.

Q. You thought that you could most effectively present your case by merely attempting to restate the cost studies of the protestant lines?

A. My opinion was that it would be sufficient for this case, yes. I so advised our counsel and other members of the committee.

Q. In other words, you are the one who controlled that?

A. I didn't control that. I was merely one voice. There were many others.

Q. Well, isn't there some leadership there? Somebody must decide something. Now, you say you made that, gave that advice to somebody who adopted it, or just because you gave the advice, that set the pattern?

Mr. Colgren: Mr. Examiner, I don't know what this line of questioning is leading to. It is very apparent what it [fol. 2030] led to. The witness has filed his testimony. I think that to show who arrived at what method of determining the case is quite beside the cross examination that is presently before the Commission.

By Mr. Bongartz:

Q. Mr. French, as I understand your testimony, you don't regard the amount of the export-import traffic handled by the Pennsylvania, the Baltimore and Ohio, and the

Central of New Jersey, as representative of the picture, export-import picture at New York.

Isn't that correct?

A. Well, when you say "amount" let me qualify it to say the relative amounts of the various kinds of handling such traffic receives, and certain types of commodities. Insofar as total tonnage is concerned, perhaps it might be representative.

Q. You stated, if I can just put my hands on it—

A. When you break it down among lighterage, car floatage, and so on, wheel-to-keel, I believe it isn't representative.

Q. It isn't representative?

A. No.

Q. On page 11 you try to make a distinction between our harbor operations. You say they are not representative of the harbor operations of the other New York lines. Then over on page 15 you say, "This means," referring to our cost study, "that two-third of the traffic is handled by the other railroads and has not been properly costed."

[fol. 2031] Mr. Colgren: Mr. Examiner, I must object to that.

Mr. Bongartz: I don't have a question yet.

Mr. Colgren: I must object to you continuing to question unless you read all of paragraph 4 on page 11.

Mr. Bongartz: All right. I'll read all of paragraph 4.

Mr. Colgren: Thank you.

By Mr. Bongartz:

Q. Paragraph 4 on page 11 says this: "Protestants' harbor operations as studied are not representative of the harbor operations of the other New York lines with respect to lighterage, car floatage, trucking-in-lieu-of-lighterage and ship to car."

And then, over on page 15, it says, referring to our study, Mr. French says, and I quote, "This means that two-thirds of the traffic is handled by the other railroads," meaning his group of railroads, "and has not been properly costed."

Now, I have read that correctly, haven't I, Mr. French? That is what you said?

A. Yes, that's right.

Q. Now, in view of that opinion on your part, as contained in your testimony, why didn't you properly cost out the costs for the group of railroads that you represent?

A. Well, we decided not to make a cost study of our own.

Q. That is your answer?

A. Certainly. We didn't make a cost study. We took the existing cost study—

[fol. 2032] Q. I'll take that answer.

A. —and modified it.

Mr. Bongartz: That is all I have, Mr. Examiner.

Exam. Boat: Any further cross?

(No response.)

Exam. Boat: Redirect?

Mr. Colgren: I wonder if I may have a few minutes before redirect, Mr. Examiner.

Exam. Boat: It is a little early for a recess, but I guess we might recess.

Mr. Colgren: We were requested to make some computations, and I think they have been made.

Mr. Bongartz: May I say this at this point? May I request that these additional work sheets that Mr. Colgren furnished to me yesterday be reproduced and distributed and made a part of Exhibit 115?

May the record show that I am returning the work sheets to him.

Mr. Colgren: Thank you, Mr. Bongartz.

Exam. Boat: That may be done.

Mr. Colgren: We will undertake to do that, Mr. Examiner.

Do you feel, Mr. Bongartz, that it is necessary for this to be distributed to all parties?

Mr. Bongartz: Well, I shouldn't speak for others. I would like to have a copy myself, and I am sure Mr. Lang-

[fol. 2033] don would like to have one.

Mr. Langdon: Let's have them filed with the work sheets. They are part of the work sheets.

Mr. Bongartz: The same ones that you distributed the work sheets to.

Exam. Boat: We will take a ten-minute recess.

(Short recess.)

Exam. Boat: Come to order, please.

Redirect examination.

By Mr. Colgren:

Q. Mr. French, yesterday you were requested by Mr. Langdon, I believe, to supply some comparative figures by cars comparable to the per ton comparisons made on page 23 and 24 of your verified statement.

Have you made those computations?

A. Yes, sir, we have.

Q. Will you read them into the record, please?

A. To compare with the $9.30 per ton in revenues being higher at New York than at Baltimore, on a per car basis the figure is $271.70.

To compare with the $7.81 per ton of cost higher at New York than at Baltimore, the figure on a per car basis is $226.27.

Mr. Bongartz: Would you mind repeating that?

The Witness: $226.27.

The bases for each of these figures are the same as the [fol. 2034] bases for the $9.30 and the $7.81.

Mr. Langdon: May I, for clarification, Mr. Colgren, ask a couple of questions on that?

Mr. Colgren: Surely.

Mr. Langdon: You assumed the same average loading at both New York and Baltimore for the per car figure of $270 that you gave?

The Witness: The average loading that I was able to compute at New York and at Baltimore are slightly different. They are close together, but slightly different.

Mr. Langdon: Will you give us the average loadings?

The Witness: The average loading at New York is 29.6 tons and at Baltimore 30 tons.

Mr. Langdon: From where did you obtain those figures?

The Witness: Those are calculated from Exhibits JLH-1 and JLH-2, revised.

Mr. Langdon: And this per ton difference of $7.81 appearing in the first line of page 24 becomes a difference per car in expense of $226?

The Witness: $226.27, yes.

Mr. Myskowski: Mr. Colgren, could I ask a question for clarification?

Mr. Colgren: Yes.

Mr. Myskowski: The $7.81 figure, as I understand, is the fully distributed cost of Mr. Heywood's study before [fol. 2035] any adjustments?

The Witness: That is correct.

Mr. Myskowski: And your out-of-pocket runs, what was it, 58 per cent, or something like that?

The Witness: As I calculate the port cost, yes.

Mr. Myskowski: So this figure might be something like half what it is if you computed it on the basis of the out-of-pocket after adjustments?

The Witness: No, not necessarily as low as that. It would be less than it is, but I would have to compute it. It would be the overall ratio including the linehaul and inland terminal costs.

Mr. Myskowski: The only thing here is you are making a computation of what it would be assuming Mr. Heywood's totally distributed costs were correct?

The Witness: That is correct.

Mr. Myskowski: Thank you.

Mr. Colgren: No further direct, Mr. Examiner.

Exam. Boat: That seems to be all.

You are excused, Mr. French.

(Witness excused.)

Offers in Evidence

Exam. Boat: Do you wish to offer the exhibits?

Mr. Colgren: Yes, sir. May Exhibit 113 and the appended exhibits, WFF-1 and 2, be received in evidence?

Mr. Bongartz: Mr. Examiner, I wish to object to that [fol. 2036] portion of Exhibit 113 which appears at the

bottom of page 23, in which the witness states, "Any reasonable doubt as to the compensatory nature of the proposed New York rates as a whole should be dispelled by the figures shown in Witness Keefe's Exhibits No. 1-4."

Now, that is certainly highly improper and objectionable. Here this witness, apparently as an after thought, when he gets to the end of his purported restatement of costs, tries to lift himself by his own bootstraps by referring to an associate witness.

I object to that and ask that it be stricken.

Exam. Boat: Well, the objection will be noted and the exhibit received.

(Respondents' Exhibit No. 113, Witness French, was received in evidence.)

Mr. Colgren: Mr. Examiner, there was left pending yesterday the introduction as an exhibit, I think the number reserved for the exhibit was No. 114.

Exam. Boat: 114 for Witness Heywood's papers.

Mr. Colgren: That's right. And I have a little tabulation which will describe the various work papers for the record, I think, so that we may have some record of what they include.

Exam. Boat: Very well.

Mr. Colgren: They are broken up into 15 parts. I believe they may be adequately described by reference to [fol. 2037] the letter paging that has been made.

Exam. Boat: That is the paging which you designated that you stated yesterday?

Mr. Colgren: That is right. They may be described as follows for the record:

Page A-1 is a summary of all roads at Baltimore.

Pages A-2 through A-11 are the Pennsylvania Railroad's underlying work sheets for the computation of costs at Baltimore.

Pages B-1 and 2 are a summary for all the railroads at Philadelphia.

Pages B-3 through B-10 are the Pennsylvania Railroad's underlying papers relating to Philadelphia.

Pages C-1 through C-22 are the underlying papers for the rail line Form A 4-54, Eastern District, 1955 computations made by Witness Heywood.

Page D-1 is the Pennsylvania Railroad New York revisions to Sheets D-2 and 3.

Sheet D-2 is a summary for the roads participating in the New York studies, namely, the B&O, SIRT, the CNJ, and the Pennsylvania Railroad.

Sheets D-3 through D-20 are the Pennsylvania Railroad underlying papers for the New York area.

E-1 through E-17 are the underlying papers for the Reading Railroad at Philadelphia.

[fol. 2038] F-A through F-33 are the Canton Railroad Company's underlying work sheets at Baltimore.

G-1 through G-12 are the B&O work papers for Philadelphia.

H-1 and H-2 are the terminal cost summaries for Baltimore, Philadelphia and New York.

I-1 through I-28 are the B&O work sheets for Baltimore.

J-1 through J-10 are the Western Maryland papers for Baltimore.

K-1 through K-44 are the work sheets for the B&O, SIRT, and CNJ at New York.

Now, that completes the description of Exhibit 114. I have a set of those exhibits for the reporter.

There is one other matter I think perhaps we should take up.

Exam. Boat: Perhaps I should indicate that we receive these.

Do you wish to offer those as Exhibit 114?

Mr. Colgren: 114.

Exam. Boat: That will be received.

(Protestants' Exhibit No. 114, Witness Heywood, was received in evidence.)

Mr. Colgren: I am not sure whether the underlying data for Mr. French was assigned an exhibit number.

Exam. Boat: Yes. I assigned No. 115.

Mr. Colgren: Mr. Examiner, I am not sure that the other [fol. 2039] underlying cost papers were received in evi-

dence, although I am reminded they were marked yesterday. In excess of caution, may I ask that they be received in evidence.

Exam. Boat: The work papers which were identified as those of Witness French, Exhibit 115, consisting of 34 sheets numbered in series, and an additional seven sheets, also a part of that exhibit.

Mr. Bongartz: Then, if you please, it will be the additional sheets that Mr. Colgren is going to have reproduced.

Well, have you included those?

Exam. Boat: No. I haven't mentioned those.

Mr. Bongartz: I thought they would be made a part of 115. Those were the additional working sheets.

Exam. Boat: I think that they probably should be.

Mr. Bongartz: But when they are received, can they be made a part of this exhibit?

Exam. Boat: That's right. They can be made a part of this exhibit.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

The working papers of Witness French may be received as Exhibit No. 115.

(Respondents' Exhibit No. 115, Witness French, was received in evidence.)

[fol. 2040] Exam. Boat: Now we have Mr. Cole's.

Mr. Keenan: May I tender for identification, Mr. Examiner, a 54-page document, the first page of which reads, "New York, New Haven and Hartford Railroad Company Summary of Terminal Costs of Export-Import Freight, Boston, May 1957."

I think we stated that we had reserved a number.

Exam. Boat: It will be identified as 116.

(Respondents' Exhibit No. 116, Witness Cole, was marked for identification.)

Exam. Boat: Do you tender it in evidence?

Mr. Keenan: Mr. Examiner, Exhibit 116 is a set of the work papers used by Witness Cole and underlying his Ex-

hibit 110 in this proceeding. I tender it for receipt in evidence.

Exam. Boat: That will be received as Exhibit 116.

(Respondents' Exhibit No. 116, Witness Cole, was received in evidence.)

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Colgren: If we may at this point entertain a suggestion of a stipulation as to the annual reports of the railroads.

Mr. Langdon, Mr. Bongartz, and other counsel, will there be a willingness to stipulate the last five years of annual reports of railroads serving ports concerned in Docket I&S 6615?

[fol. 2041] Mr. Bongartz: If you are directing your question to Mr. Langdon and me, I think you should extend it to other counsel.

Mr. Colgren: I did.

Mr. Hanifin: If the Examiner please, if no one is going to speak up on this subject, I am going to object unless I know what particular purpose Mr. Colgren has in mind with respect to that.

Mr. Colgren: Well, actually the purpose I think would be to demonstrate the relative positions, financial and so on, of various parties in this proceeding. Perhaps we could stipulate to a profit and loss or balance sheet items that go in to form annual reports.

Mr. Hanifin: If that is his only explanation, then of course I would object. I see no relevance to it.

Mr. Moerman: What period did you ask for, Mr. Colgren?

Mr. Colgren: I asked for the past five years, but I am willing to entertain any period of time.

Mr. Moerman: While this is being considered Mr. Examiner, I should like counsel on the other side to take under consideration my request that the a[illegible]ual reports, so far as the balance sheets and income stat[illegible]ments of all

carriers in this proceeding [illegible] available for a period 1946 through and including 1956, on the ground that there has been a substantial amount of testimony in this case on the other side about the relative prosperity of the Port of New York, expressions like "how greedy can you get," [fol. 2042] and I think it relevant to this case to show, in a case where a broad rate structure is involved, the essential condition of the carriers who are the respondents here and who are the protestants.

Mr. Hanifin: If the Examiner please, Mr. Moerman's comments are very interesting, but he didn't demonstrate what relative contribution the import or export traffic might have made to whatever prosperity or unprosperity a particular carrier may have, and it has absolutely no relevance to this proceeding.

Mr. Moerman: Well, it has a bearing, Mr. Hanifin, I submit, on the question of the competitive need of the proponent carriers here for the rates under suspension.

Exam. Boat: Well, objection has been made to the stipulation. I don't know how we can require it.

Mr. Colgren: Yes. Well, initially in the proceeding I had asked, as a matter of fact, in the prehearing conference, I had asked concerning certain records, public records of the AAR, and so on. At that point Mr. Burgess had indicated that he had no objection. He said, "We have no objection to use of official statistics that I know of." And Examiner Boat indicated, "All right."

I wanted to clarify as to how far that indication by Mr. Burgess, who was at that time speaking for the railroads to the south, indicated agreement to the use of public records.

Mr. Walker: Mr. Examiner, it seems to me, in a pro- [fol. 2043] ceeding of this kind which involves rates to and from New York and the other ports and the respondents at New York have refused upon a half a dozen occasions to give us any information whatever as to the cost that is involved in the handling of the traffic here, that is, the general financial information that he wants in these annual reports has no pertinency whatever to this proceeding. Now, if they want to know what the costs

are and whether they are making money, they should come in here and give us the cost at New York.

Mr. Colgren: I take it there is no agreement to the stipulation.

Exam. Boat: No agreement.

Mr. Hanifin: Mr. Examiner, may I suggest that if the side seeking equalization wants to put in information of this kind, they can simply do it by exhibit form and we can deal with the issue of relevancy and materiality after they submit it in exhibit form. They have had more than a year to prepare this. I am certain it is not a new thought. If they had any inclination to put it in, they could have very well done it by exhibit form and we could have dealt with the issue on an objection before the Examiner. Now they bring the matter up and want the availability of annual reports for an extensive period of time without us having any opportunity whatsoever to know what use they are going to make of it.

Mr. Moerman: Well, I will explain the use. I simply [fol. 2044] want to put in my brief a summary of the balance sheets and income statements of all the carriers concerned and show their relative prosperity. Now, when I mentioned the subject long ago to Mr. Colgren, he said, "Well, don't worry about that. It has been agreed to." And then the other night we got to looking into the prehearing conference and he pointed out to me that while Mr. Burgess had very generously suggested he had no objection to official statistics, that, nevertheless, what Mr. Burgess said was not in the nature of a stipulation. Whereupon we decided that when this hearing had concluded we would raise the question for clarification.

Mr. Foley: Mr. Examiner, I wonder if we can get a compromise here. Even if we can't have the Hampton Roads stipulation, maybe Philadelphia and Baltimore would be willing to have their figures in. I haven't heard any objection.

Exam. Boat: Well, that is a possibility.

Mr. Hanifin: Mr. Examiner, as I understand it, a further hearing is going to be requested in this proceeding. It seems to me that that would be an appropriate time for the lines seeking equalization to tender—

Mr. Colgren: Of course, Mr. Examiner, the request for further hearing is going to be resisted as strongly as possible.

Mr. Hanifin: Could we reach that issue first before we make any final decision with respect to a stipulation, because at that time we might know a little bit more about [fol. 2045] whether there would be an opportunity for the lines seeking equalization to submit this information.

Mr. Moerman: Mr. Examiner, this is extraordinary. The material is in the official records, no more than the balance sheets and income statements. I find it extraordinary that Mr. Burgess didn't have any objection that there is an objection on files openly available.

Exam. Boat: There seems to be a very clear indication by Mr. Burgess that such matters could be considered or might be considered.

Mr. Langdon: Would you, Mr. Colgren, be willing to limit the stipulation to the rate of return for the individual railroads on their net investment as reported from time to time to the Commission, not only the annual reports, but I think also in the AAR figures, namely, that one statistical net result for the years' operations for these individual railroads?

That is it, isn't it? I mean, that is the net result for the year.

Mr. Colgren: Well, apparently, Mr. Langdon, the figure you suggest would not be relative to the anticipated showing, since it would include such items as passenger deficit problems.

Mr. Langdon: We will show that separately. In other words, we will show two things, or agree to the showing of two things, the railway operating income as applied to your net investment, and show separately your passenger deficit.

[fol. 2046] Mr. Colgren: Well, of course, your net investment would include depreciation, depreciated properties.

Mr. Langdon: Well, gross investment, then, if you want to apply it that way.

Mr. Colgren: That apparently would not answer the purpose that Mr. Moerman has indicated he had in mind in his argument and brief.

Exam. Boat: May I inquire what publication would contain the data you mentioned?

Mr. Langdon: Well, of course, it is computable, sir, from the annual reports.

Exam. Boat: It would be submitted as an exhibit?

Mr. Langdon: It could be filed as an exhibit. It is computable from the annual reports. And I think it is also computable in an estimated form from certain reports that are filed on behalf of the railroads by the AAR.

Mr. Myskowski: Mr. Examiner, I understood the original objection was on the question of relevancy. If they are willing to concede that the rate of return is relevant, I don't see any objection to putting it all in. They can put in passenger deficits or any facts that they think would help their position. But I think once the question of relevancy has been resolved, I think it all should go in and use it for whatever purpose they want, and we can use it for whatever purpose we want.

[fol. 2047] Mr. Bongartz: No, we can't agree to that.

Mr. Hanifin: He must be specific, tell us what he wants and what he wants to use it for.

Mr. Moerman: Let me state it once more. Balance sheets, income statements, for all protestant carriers, 1946 through 1956.

Mr. Macleay: Which request are we considering, Mr. Examiner, Mr. Colgren's or Mr. Moerman's?

Mr. Moerman: Well, this is my request. And the purpose is to show the relative financial strength of the carriers involved in this case separately and as groups.

Mr. Langdon: Well, we think, sir, that the income statements are all right for these individual railroads, including '57, however.

I take it you would agree to that.

Mr. Moerman: No objection.

Mr. Langdon: The balance sheets, though, we think are irrelevant.

Mr. Moerman: Well, I think the balance sheets are highly relevant because they really show the condition of the carriers at the time. If we go through, say, 1956 or '57, they will tend to show, more than any income statement, the true financial condition of the carriers here involved. If

we didn't have here a broad rate structure, it might be argued that this material is irrelevant. However, the Com- [fol. 2048] mission has a heavy duty in this case, it has a heavy duty in connection with the administration of the Interstate Commerce Act. It is charged with the responsibility by Congress for promoting a healthy and sound transportation system, including a transportation system by railroads. Here we have many railroads, large groups of railroads, who are seeking adjustments in their rate structure to include our competitive position. I think one of the most pertinent questions involved in this case, Mr. Examiner, is the need of the proponent railroads, the respondents, for an additional revenue, the need to be permitted to compete. That is a factor so highly relevant in this case that I do not understand the objection except that the railroads on the other side fear that the inclusion of such information in this record will possibly and most probably operate to their detriment.

Mr. Bongartz: It is a misinterpretation.

Exam. Boat: Well, there seems to be no inclination to agree to more than the income statements, Mr. Moerman.

Mr. Langdon: We don't, Mr. Examiner, object to these additional balance sheets on the ground of competency. Our objection goes to relevancy. Now, it seems to me that, had this evidence been relevant in the minds of the other side, that they would have included that, perhaps a showing on that point in their case and we could have agreed here that perhaps, if they regarded that showing as relevant, [fol. 2049] to keep it up to date when this case is argued. But there has been no such showing. We are, in summary, prepared to agree that income statements may be filed as a part of the stipulation. We do not think, however, the balance sheets are relevant in this rate case. But we do not object, and I don't want to be misconstrued, on the ground of competency.

Mr. Myskowski: Mr. Examiner, I want to make two observations. First, I think the understanding was that such things would be admissible. Secondly, my recollection is that Witness Flanagan, for the New Haven, put in an exhibit showing the comparison of the New Haven's in-

come with those of the B&O and others. Now, I am sorry that my recollection—

Mr. Macleay: He did it the right way, Counsel.

Mr. Myskowski: Sure. But the matter has been raised, has it not?

Mr. Macleay: No. I don't think anybody made any objection on the grounds of relevancy.

Mr. Myskowski: Isn't it in the record?

I believe the matter has already been raised, sir.

Mr. Foley: Mr. Examiner, I wonder if this compromise is possible. Will they stipulate that this may be referred to, but to reserve their right to object on the ground of relevancy as to the balance sheets.

Mr. Keenan: Concede competence but don't concede relevancy, let the Commission decide that.

[fol. 2050] Mr. Langdon: Can't we, sir, discuss this question of the further hearing? Depending upon the result of this request of ours, this may largely resolve this question that now is pending.

Exam. Boat: Well, I think it might.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Langdon: As we have advised you, Mr. Examiner, both orally and in writing, with copy to the other side, the interest for which I speak desires to file further evidence in this case, evidence of the nature of rebuttal evidence.

Now, our justification for that is that the interests for which I speak move forward and produce certain cost estimates in these cases. The work sheets—

Exam. Boat: I don't think we need have all this on the record, Mr. Langdon. If it is pertaining to a further hearing, I don't think we need it on the record.

Mr. Langdon: Well, just as you say, sir.

Exam. Boat: Let's suspend the record here. Let's strike that.

(Discussion off the record.)

Exam. Boat: On the record.

The record will show that after presentation of the request for further hearing, an opportunity for counsel to [fol. 2051] discuss this, the Commission has concluded to permit further hearing for the purposes indicated by the protestant railroads and supporting interests, such hearing to be held on September 16th, 1958, at 9:30 at Washington, D. C., and evidence expected to be introduced at that hearing should be furnished to interested parties by August 15th.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Evidence related to costs as introduced by the respondents.

Mr. Langdon: Well, we want an opportunity, sir, to show that our cost figures are representative, contrary to the duplications in Mr. French's testimony. We also want to show that instead of being too high our out-of-pocket ratio as applied to the New York Terminal costs in fact is too low. We also want an opportunity to reconcile the traffic studies with the traffic actually included in the cost presentations or the cost exhibits submitted by us. We want, fourthly, an opportunity to show that some of these alleged mistakes in Mr. French's testimony are not in fact mistakes. And, fifthly, we want to include in our restatements of the true costs those adjustments of Mr. French which we find acceptable.

In the case of Boston, frankly, sir, our view of the underlying papers has not proceeded to the point where we are able to say. It is possible, I suppose, that we should have [fol. 2052] no evidence as to Boston. On the other hand, I am just not prepared to say. It will be in the nature of answering testimony confined in the case of Boston to the cost study that was submitted on behalf of Witness Cole. We don't care to introduce any further evidence as to Boston on other subjects. In other words, it will be confined to Mr. Cole's exhibit.

Mr. Keenan: I understand, from what Mr. Langdon said, that it will be confined to Mr. Cole's testimony concerning Boston costs. Is that right?

Mr. Langdon: That is right, yes.

Mr. Keenan: That is perfectly satisfactory, confined to replying to Mr. Cole's testimony concerning costs at Boston.

Mr. Bongartz: Whatever his testimony said, it was in connection with costs. Now what are you trying to do?

Mr. Keenan: I am trying to find out what reason. If there is something else that is going to come in here with regard to Boston, we are entitled at least to notice of it, sir.

Mr. Bongartz: Mr. Langdon explained that it was only Mr. Cole's testimony that he would undertake to bring any testimony in on.

Mr. Keenan: What one person may construe his testimony to be can differ from what another person will construe it to be. I think we are entitled to a limitation of this hearing on Boston to Boston costs, if the Examiner please.

[fol. 2053] Mr. Langdon: We are perfectly willing, as set forth on the Cole exhibit, we are perfectly willing to limit it.

Exam. Boat: As I understand, Mr. Cole's exhibit relates to costs. Is that all it relates to?

Mr. Keenan: To Boston costs, if the Examiner please.

Mr. Langdon: What do you mean when you limit it to Boston costs? What are you talking about?

Mr. Keenan: I mean not San Francisco costs, Baltimore costs; Boston costs, in other words.

Mr. Langdon: That is what Mr. Cole dealt with, isn't it?

Mr. Keenan: No, he did not. I thought we had gone through this before clearly with the Examiner, and Mr. Cole dealt with nothing except Boston costs and what other southern witnesses had said about non-Boston costs. In other words, he attempted in no way to restate southern tier costs to revise witnesses' statements. The only analysis he purported to make was the Boston costs. And, for that reason, I would like some reasonable assurance tha the hearing coming up with regard to Mr. Cole's testimony is limited to a reply to his testimony concerning Boston costs. I think it is a legitimate request, Mr. Examiner.

Mr. Langdon: Well, I think that is the limitation. We certainly don't propose to restate Baltimore costs or Philadelphia costs or Hampton Roads costs.

Mr. Keenan: I am satisfied with that statement.

[fol. 2054] Mr. Moerman: Is it understood that the work papers will come forward in usual fashion with these, with this additional material?

Exam. Boat: That was mentioned just a moment ago, Mr. Moerman.

Mr. Moerman: I am sorry.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: Let the record show that Mr. Bongartz tenders in evidence the statement previously identified as Exhibit 119, and it is received in evidence as such.

(Protestants' Exhibit No. 119, Counsel Bongartz, was received in evidence.)

Mr. Keenan: Mr. Examiner.

Exam. Boat: Yes, sir.

Mr. Keenan: With regard to the subject of our previous stipulation talk that we had, I would propose an agreement of the parties that we will stipulate to competence, the authenticity, in other words, of the balance sheets and income statements as reported in annual reports to the Commission of the roads parties to this proceeding for the years 1946 through 1957, with the understanding that such agreement concerning competence in no way concedes the relevancy of such data to this proceeding.

Mr. Foley: I think we need a little more than competence, [fol. 2055] though. We want it in the record.

Mr. Keenan: Well, if we stipulate to competence, then I would go and say that the Commission take notice of it for the purpose of deciding its relevancy.

Mr. Langdon: Let us have a little conclave here.

Exam. Boat: Very well. Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Langdon: We have no objection, then, to the stipulation provided it is confined to the income accounts.

Exam. Boat: That is a stipulation of the income accounts?

Mr. Langdon: And balance sheets, both.

Exam. Boat: And balance sheets.

Mr. Langdon: So limited, we have no objection also to include '57.

Mr. Keenan: I said '46 through '57.

Mr. Langdon: Very well.

Exam. Boat: The record will so show.

Mr. Keenan: If I understand the result of that correctly, Mr. Examiner, that would mean that, on August 15th, we can file an exhibit which would constitute a tabulation of—

Mr. Moerman: No.

Mr. Hanifin: Yes, because, of course, that raises the issue of cross examination. I thought along the lines that Mr. Keenan did, that it would be submitted on August 15th.

[fol. 2056] Mr. Moerman: Now, Mr. Hanifin, Mr. Langdon said he stipulated we could refer to the matter. Let's leave it there and not put us to the necessity of going into these annual reports and drawing them up for the Commission's file.

Mr. Hanifin: I would like to see the form it is drawn up in.

Mr. Moerman: We are not going to draw it up at all. We are simply going to refer to these annual reports. I think it is unconscionable to put us to the expense of introducing, reproducing what is in the report.

Mr. Langdon: Will you also be good enough, Mr. Moerman, to include passenger losses, just a net figure as to passenger losses?

Mr. Moerman: Yes.

Mr. Bongartz: Break down the annual reports.

Mr. Moerman: You are including that in the stipulation.

Mr. Bongartz: That portion of the annual report that makes a breakdown as between passenger and freight.

Mr. Moerman: Why, of course, yes, sir.

Mr. Hanifin: Can we be off the record a second?

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: Well, that seems to conclude the matters that we can deal with now, and this hearing stands ad-

journed until September 16th, 1958, at 9:30 a.m., here at Washington.

[fol. 2057] (Whereupon, at 12:40 p.m., the hearing was adjourned until 9:30 a.m., Tuesday, September 16, 1958, at Washington, D. C.)

[fol. 2058]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

FSA Docket No. 32204

[Title omitted]

Tuesday, September 16, 1958.

Met, pursuant to notice at 9:30 o'clock a. m.

Before: Marion L. Boat, Examiner.

APPEARANCES:

As heretofore noted.

[fol. 2059] PROCEEDINGS

Exam. Boat: We will come to order, now, gentlemen. We are ready to proceed.

This, as you probably all know, is an adjourned hearing from June and we will proceed now to the cross-examination, I guess, of the witnesses.

Mr. Bongartz: It is my understanding that the first witness is not desired by the other side and may be excused. Is that correct?

Mr. Colgren: That is right.

Exam. Boat: Just a moment.

Mr. Macleay: Mr. Examiner, before we proceed with the cross-examination of the witness, I wonder if I might at this point—

Exam. Boat: Please, could we dispose of this other matter here?

Mr. Macleay: Certainly.

Exam. Boat: I have the original of Witness Petterson's statement which will be Exhibit No. 120.

Mr. Bongartz: It should be offered, I think, as Exhibit 120.

Exam. Boat: No one desires to cross-examine the Witness Petterson. The exhibit is received in evidence.

(Exhibit No. 120, Witness Petterson, received in evidence.)

[fol. 2060] Mr. Macleay: Mr. Examiner, at the last session of this hearing in June, it was agreed that there should be prepared and presented in the nature of late-filed exhibits, certain tabulations and comparisons drawn from the underlying data of Witness Laux' Exhibit 107, Exhibit A-6, and also his Exhibit A-2 of Exhibit 107, and Exhibit WSH-1 and summaries therefrom Witness Hamill Exhibit 70. Those have been prepared. They have been examined by counsel for the New York Port Authority and I understand that they have no objection. They are purely factual material drawn from that basic data as agreed.

I wonder if we could have them marked as exhibit numbers and received in evidence at this time, sir.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Do you have copies of it there?

Mr. Macleay: Yes, sir. I might state also, sir, that we are prepared to mail them to all parties of record, all people on the service list. I have only a limited number for distribution at this time.

Exam. Boat: I think we should assign that Counsel's Exhibit. There will be no supporting witness?

Mr. Macleay: No, sir.

Exam. Boat: One is headed: "Analyses of Census Bureau Tabulations Upon Which Was Based Exhibit A-6 of [fol. 2061] Witness Laux Exhibit 107," and that will be Exhibit 121, and the other entitled "Corrections to Exhibit A-2 of Witness Laux Exhibit No. 107," etcetera, as described on the title page, will be Exhibit No. 122.

(Exhibits Nos. 121 and 122, Counsel Macleay, received in evidence.)

Mr. Macleay: We will mark our copies with the exhibit numbers and distribute them to the service list. Anyone who wants copies at this time may have them.

Exam. Boat: There being no objection, these will be received as exhibits in evidence, Exhibits No. 121 and No. 122.

Mr. Moerman: No objection, Mr. Examiner.

Exam. Boat: I had already received them in evidence. Are you ready to proceed now with the other matters?

Mr. Bongartz: Mr. Clark.

F. H. Clark resumed the stand and testified further as follows:

Direct examination (continued).

Exam. Boat: Do you have the original of Mr. Clark's testimony?

By Mr. Bongartz:

Q. Mr. Clark, I show you a statement in this proceeding bearing a verification and ask you whether this is your statement?

A. It is.

Mr. Bongartz: May this be marked?

[fol. 2062] Exam. Boat: It will be marked as Exhibit 123.

(Protestant's Exhibit 123, Witness Clark, marked for identification.)

By Mr. Bongartz:

Q. Mr. Clark, is there a correction that you wish to make in this statement?

A. Yes, sir. Page 3, there is a typographical error, page 3, in the first full paragraph, the fifth line down appears "1697." That should be "1637."

Q. Is that the only correction?

A. Yes, sir.

Mr. Bongartz: Mr. Clark is tendered for cross-examination.

Cross examination.

By Mr. Colgren:

Q. Mr. Clark, we never did quite understand on your vessel operation report statistics that you furnished us what precisely was meant by the various terms, "Cars returned" and "cars held." Can you give us a little more understanding of those terms?

A. "Cars returned" are explained in my Exhibit 123 at pages 2 and 3 as cars that are carried back and forth between the Jersey shore and the Piers 49 and 50 for various reasons; sometimes the cars are partly unloaded, sometimes they are empties, sometimes they have not been touched. They are carried back and forth until they are either completely unloaded or are reloaded, and when they were [fol. 2063] placed on the floats and when they were removed from the floats, they are not properly includable in any unit cost figure.

Q. Mr. Clark,—

A. And as to your other term, I did not find that on the vessel operation report.

Mr. Bongartz: Here it is.

The Witness: Where?

That has the same meaning as cars returned.

By Mr. Colgren:

Q. In that vessel operation report you have figures designated as cars loaded and cars empty and then in sort of ambiguous terms, "cars returned", or "cars held", which has been indicated as the same meaning. Are those cars held or cars returned included in either the cars loaded or cars empty?

A. When they were first put on the float and when they were removed from the float, they were included.

Q. Your testimony is, then, Mr. Clark, that there are a

certain number of cars which just are never removed from the float until some final action is determined?

A. My testimony is not that they are never removed. For example, a float may have ten cars when first loaded, we will assume, and at the afternoon, late in the afternoon, about eight of them have been unloaded and reworked, loaded; two have not been touched. The eight cars are entitled to their road haul movement in the proper train. [fol. 2064] Therefore the float is pulled from the pier to make the connection at Harsimus Cove.

Q. These are empty cars?

A. They are loaded cars, under this example. They haven't been touched.

Q. Excuse me. I think the record is a little confused. I assumed you were going to talk of ten loaded cars in the first instance.

A. I will start over again.

Q. All right.

A. The 10 has 10 loaded cars leaving Harsimus Cove for Piers 49 and 50. During the day the warehouse force is able to work only 8 of those cars and reload them for western destinations, we will assume. In order that those 8 reloaded cars will make the proper connection at Harsimus Cove that train must be pulled regardless of the fact that there are still two loaded cars that have not been touched. So when the float is unloaded at the Cove the eight cars are removed and the two cars are allowed to remain on the car float and are taken back to the Piers 49 and 50. Those are "return cars."

Q. Yes, sir. It is your testimony, then, that these two cars would always be in such a position on the car float that they need not be disturbed at Harsimus Cove?

A. In practical operation that is not so. If those particular two cars happen to be in the middle of the car float, [fol. 2065] they naturally would have to be pulled on and replaced on the car float.

Q. Yes, sir. Now, is any record kept of these cars while they are floating around back and forth across the river?

A. There is no record kept of empty cars.

Q. Mr. Clark, do you mean that for several days you

just don't know where an empty car is if it happens to be on a float?

A. The agency—I will make that a little broader—the agency at 49 and 50 do not keep any record of empty cars when the float is loaded entirely with empty cars. They do keep a record of it if their float has loads and empties thereon.

Q. I don't believe I quite understood that, Mr. Clark. Would you mind repeating that?

A. In the practical operation, it is sometimes necessary to load a float entirely with empty cars because you have an unbalanced movement, westbound; therefore, at times there are solid floats of empty cars. The agency at 49 and 50 does not keep any record of those empty cars until they are loaded. But, on the other hand, you have floats going over sometimes with loads and empties. In that case, he will keep a record of the entire number of cars on the float.

Q. Yes, sir. Is any record at all kept of an entire car float loaded with empty cars?

A. When you say "any record"; what do you mean?

[fol. 2066] Q. I am just curious to know whether you keep track of these cars.

A. The car record office keeps track of cars. They know those particular cars are located in the Jersey City area, Harsimus Cove. That record is kept in Philadelphia.

Q. That Philadelphia record is the only record you have of these empty cars that go back and forth across the rivers?

A. I don't want to answer that broad question that way. There may be records that I don't have, knowledge of that may be kept by the local men. Different supervisory officers have different ways of running their yards.

Q. We are not talking about different supervisors at different yards. We are talking about particular cars on particular car floats.

A. All right. Then my answer covers your question.

Q. If you want it to stand that way. Your answer, as I understand it, is that there is a record down in Philadelphia by your car agent?

A. And there are maybe other records that I may have no knowledge of because of the fact that supervisory officers

may run their yards and marine equipment in different ways. I have known of conductors, for example—

Q. Your answer is you know of no record with respect to these cars between Harsimus Cove and 49 and 50?

A. Now you have another broad question that would [fol. 2067] cover everything I have said, with the qualifications that I have made.

Q. Let us tighten it down as much as you want.

A. Do you want an answer to your question?

Q. Yes, sir.

A. With the qualifications that I have made, yes.

Q. Will you repeat those for me, please?

A. The record will repeat.

Q. Will you repeat them, please?

Mr. Bongartz: I see no necessity of that. I suggest that counsel direct a question to the witness.

Mr. Colgren: I accept that, Mr. Bongartz.

By Mr. Colgren:

Q. My question is: Did you know of any records kept of the empty cars which are floated back and forth according to your testimony between Harsimus Cove and Piers 49 and 50?

A. On a solid car float of empties or of mixed loads?

Q. I don't care, Mr. Clark, I want to know if there are records kept of the empty cars which, according to your testimony, float back and forth between Piers 49 and 50 and Harsimus Cove.

A. My answer has been, and I will repeat it, that there is a record naturally in our car record office of all cars on the Pennsylvania system. In so far as the agency records are available at Piers 49 and 50, they do not keep a record of solid empty car floats but they do keep a record of mixed car floats.

[fol. 2068] Q. That completes your answer, does it?

A. It does.

Q. Thank you, sir.

Mr. Clark, in answer to, I think, almost my first question, you indicated that it is seldom that the cars which are labeled as cars returned or cars held, variously in your

vessel operation report, are in such position on the car float so that they may be left on the car float without being switched on and off when the car float is worked, so to speak.

A. I didn't use the word "seldom." I said if the cars were in such a position that the outbound could not be removed, then naturally the return cars had to be temporarily removed from the float.

Q. All right. In those instances where the cars are so positioned that they must be removed from the float, there is a certain amount of work done on those cars, is that not right?

A. Yes, they have to be switched off and back on again.

Q. Yes. And I gather that there are no records made of those cars from your prior testimony, so there wouldn't be any station work involved.

A. That is simply a switching operation. The car is counted when it is put on and what is taken on permanently.

Q. Quite frankly, I find that a little difficult to understand, Mr. Clark. Is my understanding of your testimony [fol. 2069] correct that there would be no records made as these cars are switched off and on on the float?

A. Only in the sense that I have mentioned in regard to the agency records.

Q. All right, sir.

Now, this work that is performed in loading and unloading car floats, you feel, has no part in your cost of car float operation, is that correct?

A. I am not dealing with costs.

Q. Well now, what is the purpose of determining the count of 4,662 cars?

A. To answer Mr. French's comments.

Q. Did you answer me?

A. I think I did.

Q. That 4,662 cars was not a figure used in the cost study prepared, I think, under Mr. Heywood's direction in this proceeding?

A. Sure, it was used.

Q. Do you know what purpose of developing the number of cars represented by that figure was?

A. No, sir.

Q. You don't?

A. No, in the general application. I know you must obtain the unit cost by its use. All I am showing here is that Mr. French is in error in saying that—I will put it this [fol. 2070] way: that with the correction of the error in the vessel operation report there is no significance to his comment.

Q. I think his comment merely related to the discrepancy between the figures. Was there any way that Mr. French could have determined that these corrections could have been made until you prepared this exhibit?

A. I don't know what Mr. French was thinking about or how he made the study. I have a hard enough time taking care of myself.

Q. You don't know, then, what the purpose of the development of the figure, 4662, had?

A. It entered into the cost, I know that much. But as to its carrying through the formula, I do not know.

Q. On page 3 here, Mr. Clark, you indicate in the last line of your second full paragraph, you say that "474 'return' cars must be subtracted from the 5136, leaving 4662, which was the number of cars included in the cost study."

Mr. Clark, the purpose of the cost study is to apportion the various expenses of operation over the services which create those expenses, is it not?

A. I haven't introduced anything in regards to the cost study. I don't think that is a question properly applicable to me.

Q. I was just wondering, Mr. Clark, how you justify the subtraction of the 474 cars. Could you explain that for me?

A. Well, Mr. French has introduced the matter of cost in page 12 of his Exhibit 113 and in answering that I said [fol. 2071] what would ordinarily be just common knowledge that if he had an understanding of the 474 so-called return cars, he would have not used the vessel operation report total in obtaining a unit cost.

Q. May I ask you again your justification for the subtraction of the 474 cars from the total of 5136?

Mr. Bongartz: I submit, Mr. Examiner, the answer is contained in the witness' testimony.

Does he want the witness to repeat his direct testimony here as contained in his Exhibit 123? He explains there why he has done it. Does Mr. Colgren think he is going to get a different answer if he asked the question?

Exam. Boat: Are you referring to his statement that they must be subtracted?

Mr. Bongartz: The witness has gone at length into explaining why he subtracted these return cars in his direct testimony. Now counsel asks him why he did it.

Exam. Boat: There still seems to be some question in counsel's mind why he had done so. As I understand, he is trying to clarify that.

Mr. Colgren: Perhaps I ought to clarify, if Mr. Bongartz feels it is necessary, why I have some doubts about this.

By Mr. Colgren:

Q. Mr. Clark, on page 2, at the bottom thereof, you say, "The 474 does not represent 474 shipments nor 474 cars. [fol. 2072] Since the cars included within the 474 'returned' have been properly included in the cars counted for the cost study it would be improper to include them a second or third time as Mr. French appears to suggest."

Now, is it your point that regardless of the number of times of service of transporting these cars back and forth across the Hudson River between Harsimus Cove and Piers 49 and 50 that they should bear but one car count?

A. Absolutely, yes.

Q. Then the service required, in your mind, is rendered at no cost?

A. The service rendered will be obtained by dividing by the proper number of cars. It is exactly the same thing as we face in the yard operation where a car may be handled five times and another car once. It still remains a car. A car that may be handled five times can't be counted five times. It is still one car. But its handling may be that many more times than the car that is handled once.

Q. Each time a car is handled it costs—

A. That one particular car will cost more than that one car, of course.

Q. What is the difference, in your mind, between the two examples here?

A. There is no difference, in my way of understanding it.

In the first instance, in the yard operation you still divide [fol. 2073] by two cars not by one plus five. These 474 so-called returns represent that handling. You can only count by the number of cars and they have already been counted when they were put on the float and when they were removed from the float.

Q. Now, Mr. Clark, I think that you have contradicted yourself within the last two statements. Shall we go over this again in order to get the record straight?

In determining costs of yard operation, you indicated to me that each time a yard service is accorded a car there is an element of cost involved in that handling.

A. Right.

Q. Is that right?

A. Correct.

Q. Now you want to differentiate in the matter of transporting these empty cars back and forth across the Hudson River. Would you mind stating again for me why the service accorded these cars in going back and forth across the river?

A. I won't have to use the same language, will I?

Q. I hope you won't because the record, I think, is quite confusing.

A. All I have been doing is repeating my answers here since we started.

The 474 so-called return cars are not necessarily 474 cars in the sense of the report.

[fol. 2074] They had been counted when they were placed on the float. They were counted when they were removed from the float.

Q. Excuse me. You mean finally removed to go into road haul?

A. Road haul or disposition of the car, in other words, or of the float.

Q. Yes, sir. It is not the switching operation you are talking about?

A. It is the count, on the float, off the float.

Q. I see.

A. In the interim they may have gone back and forward

once or twice or three times or four times. I don't know. Nobody seems to know.

Q. Yes, sir.

A. Therefore, these 474 are simply a statistical figure. They don't represent 474 cars, different cars, but having been counted when they were put on the float and when they were removed from the float, they have no place in determining a unit cost for that marine operation.

Q. And yet, Mr. Clark, after that statement, you say that each time an individual car in the yard operation is given a service, you count that service in connection with developing the costs.

A. You don't count the car five or six times.

Q. I didn't say that. I said you count that service.

A. I want to make sure you get the understanding of it correctly.

[fol. 2075] Q. Yes, I think I do now. I have an understanding of what you said; or, rather, I know what you said. I still don't understand how you differentiate between the fact that you count the number of services afforded cars in a yard switching study and yet when you perform services for these cars going back and forth across the river you refuse to count those services.

A. There is no discrepancy between the two examples at all. They are the same. You are not increasing your divisor in your switching service and you are not increasing your divisor on your marine service.

Q. Well, I can't quite agree with you when you say you are not increasing your divisor in your switching service.

I think, Mr. Clark,—

A. Supposing you had two cars, let's take it simple-like.—

Q. Let me ask you this question. Did you or did you not, in response to our request for the number of cars handled in the switching study that I understand you were responsible for, you gave us information as to the number of cars handled?

A. No, I gave you as to the number of cars that were involved in the switching study. Of those cars there may have been one that was handled once, there may have been ten that was handled ten times, maybe one that was handled five times, but the number of cars wasn't increased.

Q. Mr. Clark, I have just been informed that you did not [fol. 2076] give us the number of cars but you gave us a figure which represented the number of car handlings.

A. I think you had better go back to the record, then, because I said it was the number of cars.

Q. I am sure that the record is straight on that. I am just trying to pursue what, to me, is a distinction you are drawing between the method of allocating costs between cars that are floated across the river and cars that are being switched on a switching operation.

I think we have pursued that far enough, Mr. Clark.

Mr. Clark, in response to our request for the number of cars handled under date of March 19, 1953, we received in purported compliance with that request a letter from Mr. Heywood in which he indicated that the yard cars handled amounted to 238,418 during September, 1956.

Now, mind you, that was in answer to a request for "the number of cars." The information as given to us described the answer as "yard cars handled."

The figure for the year 1956 was 3,016,400.

Is it your testimony that those were the number of cars handled?

A. I know nothing about that letter. I can't answer your question in relation to that letter.

Q. All right, sir.

Mr. Clark, just to have the record straight, at page 6 of [fol. 2077] your verified statement, you have a table and it is my understanding that the number of cars shown there, the average number of cars per car float includes empties. Is that right?

A. Yes.

Q. All right, sir. And again at page 8, your table there, your column headed "Lighters" would be more properly described as lighter trips, isn't that right?

A. Yes. In other words, the same lighter could have been loaded several times.

Q. Yes, sir. Now—

Exam. Boat: Now, the last column would be average tons per lighter trip?

The Witness: Yes, sir.

Exam. Boat: Thank you.

By Mr. Colgren:

Q. Mr. Clark, at the bottom of that page 8, the last sentence there, and you are discussing the figures in the table there, you say, "They also show that if the tonnage increases, so do the number of lighters, with resulting increase in lighter maintenance cost."

Is the import of that sentence that your lighter ownership increases in direct proportion to the amount of traffic you handle?

A. Not ownership. You already have the lighters. The trend of the whole idea is in support of the previous statement that due to the fact that it is almost impossible to in-
[fol. 2078] crease your average tonnage per lighter, this is some increase it doesn't amount to anything, you have to put additional lighters in use rather than to increase the load on the lighters then in use.

Exam. Boat: So we have a greater number of lighter trips.

The Witness: Yes, sir.

By Mr. Colgren:

Q. On page 6, Mr. Clark, if you please, in the last paragraph of that page, you come to the conclusion there that an increase in business necessitating car float service, that your car floats increase proportionately, I think. Is that the import of that paragraph?

A. I don't like the word "proportionately." It would increase.

Q. That is not taking into consideration, is it, the fact that these empties that you indicate in the early part of that page which are put on car floats sometimes to balance them out, sometimes to provide an adequate supply of empties at the other end of the run, it is leaving out of consideration the fact that some of those empties could be replaced with loaded cars, isn't it?

A. Then you would have to have more empty car floats, I mean car floats loaded with empty cars.

Mr. Colgren: Mr. Examiner, Mr. Myskowski has some questions with relation to permits. I don't mean to restrict him in his cross-examination, but may he take over now?

[fol. 2079] Exam. Boat: Surely.

By Mr. Myskowski:

Q. Mr. Clark, on page 7 of your statement you say over the years one of the reasons why the railroads could not increase their efficiency has been the ship permit system, is that right, sir? At the bottom of page 7.

A. The ship permit system enters into it.

Q. Is it true, Mr. Clark, that the permit requirement was not enforced until May of last year?

A. I can't answer that.

Q. Were you a witness in Ex Parte 212?

A. In a way. I was in the hospital at the time but my testimony was accepted.

Q. Then you were not in the room when Mr. Miller of AAR so testified?

A. No, sir.

Q. If the ship permit system had not been enforced until May of last year, could it have been one of the factors in preventing your increased efficiency?

A. I would like to be assured myself that that is a fact. I don't know whether I can answer your question.

Q. Well, you stated that that was one of the reasons. What made you state so? Did you have the impression that it was enforced?

A. The permit system has been in effect for years.

Q. It has been in tariffs and your impression is it was in [fol. 2080] force?

A. As far as I know it has been.

Q. You made no study of it?

A. I haven't gone back and looked over individual records, if that is what you mean; no.

Q. Just what is your job on the Pennsylvania, Mr. Clark?

A. Well, I have been retired on the Pennsylvania as per my qualifications entered in the original statement.

Q. At the time you were employed, did you deal with the ship permit systems?

A. I was assigned and worked on investigations of all character.

Q. Of what?

A. I have worked on investigations of all character, including the marine equipment.

Q. Did you in any way come in contact with the ship permit system?

A. Not in the way that you ask as to whether I have actually checked particular ship movements, no.

Q. Then you don't really know whether this was one of the factors or not, do you?

A. It certainly is required by the tariff and required by the normal operation that we can't move any cars until we are allowed to.

Q. Do you really know how this thing operates?

[fol. 2081] A. Yes. Even if we do move them to the pier without an actual permit system they have to be tied up until the ship itself will accept them. That is done strictly for railroad convenience.

Q. Do you move them without a permit?

A. They have been moved, yes. But they are not subject to demurrage and it is done strictly for railroad convenience.

Q. Then the requirement was never enforced, was it? You say if they were moved without a permit then you didn't really enforce the requirement, did you?

A. I said they were moved for the railroad's convenience. Whenever they were in a position to do it, it was done. Nevertheless, it does not alter the fact that the permit system gives the ship the right to lay those particular consignments aside and pay no demurrage on the marine equipment while it is so held.

Q. How much notice does the shipper have to give to the railroad in connection with this permit? When does the shipper have to notify the railroad as to a particular movement to a ship?

A. I will have to refer to the tariff to give any detailed answer to questions of that nature.

In actual practice, a telephone call will bring it.

Q. Doesn't the tariff require that the notification be given to the railroad 48 hours before the date?

[fol. 2082] A. It does, but in practical operation, certainly the railroad will not refuse a telephone request.

Q. Will you repeat that?

A. Would not refuse a telephone request.

Q. Within less than 48 hours?

A. Within less than 48 hours. They will try to comply with it. It is just good business practice.

Q. Isn't it true that this ship permit system was put in at the request or insistence of the railroads for their operating convenience, not vice versa?

A. I can't answer that.

Q. Well, if you get 48 hours notice, say, today, that you are supposed to move a lighter, one tomorrow and another movement on Thursday, wouldn't it be to your benefit to be able to move those two together? Isn't that the purpose of the 48 hours notice?

A. It is to give the railroad a chance to do it in the most efficient manner of the railroad, of course.

Q. That is right. The object is to improve efficiency, and you say because of that you can't improve.

A. The permit system limits us as well as working to the advantage in the way you mentioned. You can have a condition where you are tight on equipment also.

Q. Isn't it true that it was put in just to eliminate the sort of thing that you mentioned earlier, that the railroad [fol. 2083] will bring the ladder up to a ship and the ship won't accept it? Now, you do not do that. If you get notice 48 hours in advance, you can be assured that the ship will accept it, isn't that the purpose of it?

A. It doesn't always accept it. There is often demurrage collected.

Q. Do you mean to tell me if a ship says it will accept a movement on Wednesday and you move it on a Wednesday, it won't accept it?

A. It may mean the railroad is going to deliver it on a Wednesday. It doesn't mean they will unload it on a Wednesday.

Q. But they will accept it?

A. Yes.

Q. So the purpose is to improve efficiency?

A. It is to give the railroad an opportunity to make efficient use of its equipment.

Q. Exactly right, sir. Now, on page 8, where you talk about lighter trips, your whole table there merely indicates

that your average loading runs 50-some-odd tons, and, as you get more traffic, it will make more trips, isn't that right?

A. In order to make the more trips you have got to put in more lighters.

Q. What do you mean, you have to put in more lighters?

A. Because the increase in business will naturally be at more points to be served and at different periods of time, so [fol. 2084] additional lighters will be used.

Q. You mean you have an excess capacity, a lot of lighters which you take out of service all the time?

A. Additional lighter trips. In other words, you have to make more use of what you have available and if you have any in storage, or out of service, you will have to bring them back in service.

Q. This in no way indicates the amount of equipment the Pennsylvania had, does it?

A. No.

Q. Or needs?

A. No.

Q. Is it true that in '53 you had more equipment than you did, for example, in '51?

A. Well, I can't carry in mind the number of units of equipment under the various years.

Q. What is the basis for your statement that if the tonnage increases so do the number of lighter trips?

I think you agree now that word "trips" should be inserted in the last line?

A. That's right.

Q. If the tonnage increases the number of lighter trips increases and there is a resulting increase in lighter maintenance cost.

Are you qualified to say that there is an increase in lighter [fol. 2085] maintenance cost?

A. I know that in my own automobile, if I use it more I put greater repairs on it than I do if I don't use it. I think that is a general—

Q. You think that theory will hold true here?

A. It will hold true anywheres.

Q. Does your automobile rub against the garage door like the boat rubs against the dock? Do you really think there is any similarity?

A. It sometimes will run into the garage door.

Q. Do you really think there is any similarity? Do these barges have motors?

A. The general principle, yes. The principle is applicable to any equipment.

Q. Mr. Clark, if, as was testified in 212, the permit system is only now being enforced, don't you think that it will enable you to increase this average ton per lighter if you have 48 hours' notice in advance of where the traffic is going to be taken to?

A. I do not.

Q. Can you tell me why not, sir? If you had a movement going—today is Tuesday—if you had a movement going Wednesday, another Thursday to the same ship, you wouldn't put them in the same lighter or you wouldn't take them in the same tow?

[fol. 2086] A. It all depends upon the circumstances. You can't answer a general question of that nature as against a practical operation. The ship that is due on Thursday, the lading that is due Thursday might be in cars that haven't arrived yet.

Q. Do you think there is more tonnage coming in and you still would not be able to increase your load per lighter?

A. Not perceptably.

Q. If you now load, say, an average of two cars per lighter, and there is more tonnage, and you have three cars going on a ship, do you mean to tell me that would not increase the loading; is that your statement?

A. On the statement that you make three cars naturally would make more than two if they are the same type of lading, but that isn't the typical operation. The third car may not even be in the yard yet.

Q. Doesn't your operation in New York cover all types of lading?

A. Outside of bulk.

Q. And if there is an increase it would have been in one of those types?

A. Yes, but that certainly covers a category that is pretty wide.

Mr. Myskowski: That is all I have.

Exam. Boat: Any further questions?

Redirect?

[fol. 2087] Mr. Bongartz: Could we have a short recess?

Exam. Boat: Yes, we will take a 5-minute recess.

I might add if there are any here who have not filed appearances, the reporter would like the appearances because there has been a change in reporting companies, so if you will fill out a blank, please.

(A recess was taken for five minutes.)

Exam. Boat: We will resume now.

OFFERS IN EVIDENCE

Mr. Bongartz: No questions on redirect, Mr. Examiner. I would like to offer in evidence Exhibit 123.

Exam. Boat: That exhibit will be received as No. 123.

(Exhibit No. 123, Witness Clark, received in evidence.)

(Witness excused.)

Mr. Langdon: Before calling the next witness, who is Witness Talbott, I should like the record to show that there was distributed at the same time his testimony was distributed with a letter dated August 14 an errata sheet concerning Witness Mollman, Exhibit 51, MLM-2; in other words, there are corrections in the traffic study. These errata sheets were distributed with my letter of August 14, and I think they should be in the record, however, unless there is any objection.

Exam. Boat: I do not believe I received copies, Mr. Langdon.

Mr. Langdon: They are supposed to be included along with Mr. Talbott's testimony.

[fol. 2088] Exam. Boat: You are right. I have them here now.

That is a statement of four pages. Perhaps we had better identify that as an exhibit.

Mr. Langdon: Maybe this ought to be 51-A.

Exam. Boat: I think we had better identify it as Exhibit 124.

Mr. Langdon: I will call Witness Talbott.

Exam. Boat: That exhibit will be received.

(Exhibit No. 124, Witness Talbott, received in evidence.)

E. M. TALBOTT resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Langdon:

Q. You have been previously sworn, Mr. Talbott?

A. I have.

Q. Have you prepared under supervision and jurisdiction, Mr. Talbott, certain testimony in this proceeding to be offered at this hearing, including a mimeographed statement of 36 pages, together with appended exhibit, EMT-1 to EMT-12, both inclusive?

A. I have.

Q. Are they true and correct, to the best of your knowledge and belief?

A. They are.

[fol. 2089] Mr. Langdon: I offer this in evidence, Mr. Examiner, at this time.

Exam. Boat: It may be identified as Exhibit 125.

(Exhibit No. 125, Witness Talbott, marked for identification.)

Mr. Langdon: And then the appended exhibits will carry their own designation?

Exam. Boat: Yes, sir, as has been made on the face of those exhibits.

By Mr. Langdon:

Q. Mr. Talbott, do you have anything to say before you are turned over for cross examination with relation to your evidence?

A. No, I do not.

Mr. Langdon: The witness is yours.

Cross examination.

By Mr. Colgren:

Q. Mr. Talbott, do your Exhibits EMT-1 and EMT-2 include the increases granted in Ex Parte 212?

A. They do not.

Exam. Boat: They do not?

The Witness: They do not. Neither do they include the expenses which have been incurred at increased cost since we made this study, wage increases as of May 1. We are going to have some more in November.

By Mr. Colgren:

Q. That is of this year?

A. Yes.

[fol. 2090] Q. But they do include costs factored up as of January 1, 1958, is that not right?

A. That is correct.

Exam. Boat: Mr. Langdon, may I ask, do the corrections that were made in Mollman's exhibit where required, are they reflected in any computations that Mr. Talbott has made, or do they enter into it?

Mr. Langdon: No, I think not, sir. The only place would be toward the end where we made application of these costs to the traffic as a whole, but I think in that respect we will use Witness Keith's figures, and we did not use our traffic study except in so far as he used our traffic study.

Exam. Boat: Yes. Thank you.

By Mr. Colgren:

Q. Mr. Talbott, your Exhibits EMT-1 and 2 do not include the 6 cent increase authorized in Ex Parte 212 with respect to water-borne traffic, do they?

A. They do not.

Q. Mr. Talbott, on page 4 in connection with the subject, Witness French's adjustment No. 3, you have reference there to forwarder traffic. Was that included in your cost study?

A. There was a small tonnage of forwarder traffic included in my study of the export traffic arriving in New York.

Q. Was the forwarder traffic included in Witness Heywood's development of costs for the Pennsylvania?

A. I am not certain. We have a Pennsylvania man here [fol. 2091] who can answer that.

Exam. Boat: Will you speak a little louder, please?

The Witness: We have a Pennsylvania man here who can answer that.

By Mr. Colgren:

Q. At page 5, Mr. Talbott, in the last paragraph on that page, you refer to the fact that the percents of variability used by Witness French from Appendix E of Senate Document 63, were used in 1939 by the Interstate Commerce Commission's Cost Section, and, as far as you have been able to determine, have not been used since. What per cent variables are used by the Interstate Commerce Commission's Cost Section, to your knowledge?

A. They have arrived at a per cent of 80, representing the variables, so-called, out-of-pocket expenses, which are used in all the cost studies.

Q. That is in application to total accounts, is that right?

A. That was arrived at after considering every account and that was the over-all figure, although I think that the Cost Section's statement shows that the percent was closer to 90 but they used 80 per cent.

Q. Do I understand you to mean, Mr. Talbott, that the Cost Section would apply a per cent variable of 80 to each and every account that they might be concerned in studying for the out-of-pocket portion thereof?

A. Well, the Commission uses an over-all per cent of 80. [fol. 2092] I do not recall any case where the cost section applied per cent to individual accounts. They have developed that 80 per cent as the over-all per cent for all accounts.

Q. In the determination of Form A cost studies, there are no per cent variables applied to the accounts of the railroads being studied, is that right?

A. You mean there are none applicable to an individual railroad. Is that what you mean? I don't understand your question.

Q. I am trying to rephrase for my own benefit what I understood you to say: that the Commission has arrived at an 80 per cent over-all percentage as being a fair estimate of the out-of-pocket over-all average of the railroads accounts. Is that right?

A. That is correct.

Q. Now, in determining the results of a Form A cost study as developed by the Interstate Commerce Commission, in the application of that Form A formula are individual percents applied to the respective accounts in any particular study?

A. I don't recall that they are.

Q. All right, sir.

Mr. Talbott, refer, please, to page 7 of your statement. As you noted a few minutes ago, and I believe this is what you had reference to, you referred to a 6-year study by the ICC Cost Section during the period '35 through '41, show-
[fol. 2093] ing degree of variability for Account 408 of 91 per cent for the United States and in the East 80 per cent.

Now, Mr. Talbott, that relationship is based on gross ton miles, is it not?

A. Yes.

Q. Would you care to express any view, Mr. Talbott, as to the propriety or accuracy to be expected of applying a gross ton mile measurement to Account 408, which is the account covering operating expenses for floating equipment?

A. As I said before, the 80 per cent was an over-all per cent. Now, when you are talking about individual accounts as you have attempted to do in your recent cost study, there may be some differences in so far as individual accounts are concerned. But we are here dealing with all the expenses involved in handling this traffic. I do not see anything wrong in using the 80 per cent as long as we are dealing with the total expenses of handling this traffic.

Q. Mr. Talbott, I think you have not confined yourself to my question which presently is only relating to the propriety of expressing a per cent degree of variability for Account 408 in terms of gross ton miles.

Maybe I can clarify what I am driving at.

Do you know of any figures available for harbor operations which are in gross ton miles?

A. No, I do not.

[fol. 2094] Q. I think further down that page we get to what you were answering me before, Mr. Talbott. You mentioned this in the first full paragraph about midway thereof you discuss the fact that the Cost Section has employed an over-all per cent of variability for all operating expenses, rents and taxes, and for some years at least this percentage has been 80.

Now, Mr. Talbott, you correctly refer to an over-all per cent of variability for all operating expenses, rents, and taxes.

Now, in the cost study which you people have made for the New York Harbor area, are all of the accounts of the railroad represented?

A. Do you mean the cost study at New York or the whole cost study involving this traffic?

Q. The cost study of the Harbor operations.

A. No, but those particular cost studies are all blended in the total cost of transporting the traffic so in the end we have all the expenses of railroads involved in handling this traffic.

Q. In effect, Mr. Talbott, in making a special study of the New York Harbor port area, you substituted a special study for a portion of the standard Form A line terminal study, isn't that right?

A. That is correct.

Q. Now, my question was that in your substitution for [fol. 2095] one terminal which, in effect, is what you did in the cost study, you did not include all of the accounts of the railroad, or railroads rather.

A. I assume you mean that all the accounts of the railroad are not involved in the cost entering into that cost study in New York.

Q. That is right, yes.

A. No, all the railroads are not involved in that cost study.

Q. Yes, but you did apply an over-all 80 per cent variability in the original study?

A. We did in the original study but we, of course, adopted 100 per cent in the revised study.

Q. Yes, in Exhibit EMT-1 and 2.

A. That is correct.

Q. Yes.

A. I might also say right there that we happen to know in 1956 we had no surplus equipment at New York. Our equipment was in constant use throughout the entire year. We had engaged outside lighters to extend over 1500 during that year and most every month of the year, and we had no surplus equipment in New York. So, consequently, then, or in view of that, we have a perfect right to include 100 per cent of that cost as out-of-pocket because all of the equipment was used for the traffic that was available that year.

Q. Mr. Talbott, is what you have just said the study that [fol. 2096] you referred to on page 8?

A. You mean the table part way down the page?

Q. No, you refer, I think it is the sixth line down—

Exam. Boat: He referred to further studies.

The Witness: We have further analyzed, and I have personally, the operation at New York, and we have a right to include this expense purely from the solely related theory, but aside from that we have a right to consider the 100 per cent out-of-pocket because, as I said before, we had no surplus equipment in New York during 1956.

By Mr. Colgren:

Q. Yes. Now my question is: Is your ascertainment of that fact the further study that you referred to on page 8?

A. Yes. Also I might add to that the further study of the whole cost is related to solely related cost.

Q. On page 9, Mr. Talbott, on line 6, you refer to, again, "recent" studies. Are these recent studies contained in the various exhibits to your statement?

A. Yes, they are.

Q. Is there nothing further?

A. There is nothing further.

Q. Yes. Mr. Talbott, just for clarification, in a little

table on page 8, under Return on Investment, 100 per cent of all equipment, and so forth, Mr. French used 100 per cent for that category of expense, didn't he?

[fol. 2097] A. Yes, in his line haul, interior terminal costs.

Mr. Langdon: We agree that he did.

Mr. Colgren: Yes, all right.

By Mr. Colgren:

Q. Mr. Talbott, on page 9 in the first full paragraph, your last sentence there indicates that the second reason for application of solely related expenses are incurred principally because of the requirements of export-import traffic at New York. Do the B and O and CNJ have any domestic traffic given marine movement in the New York Harbor area?

A. Well, we do have a small percentage of traffic, domestic, given to marine movement.

Q. What is your concept of a small percentage, Mr. Talbott?

Mr. Langdon: Just for the sake of clarification, you are referring by "marine" to line load service and carload service.

I think the witness is confused.

I think, so the record may be clear, you might want to clarify your question now.

Mr. Colgren: I was referring to all types of operation, carfloat as well as lighterage.

The Witness: I was thinking of the lighterage movement. We do have a substantial carfloat movement, though.

By Mr. Colgren:

Q. Domestic, that is.

A. Domestic.

Q. Yes.

[fols. 2098-2099] A. But that is involved only to a very minor extent in our import and export costs in New York.

Q. Well, I was here referring to the total marine expenses. I think, Mr. Talbott, I had asked what your concept

of a small percentage of traffic was. This is pursuing your remark that there was a small percentage of domestic traffic involved in the New York Harbor marine activity.

Mr. Langdon: He qualified that answer, Mr. Colgren, when he understood that your question included freight handled in New York, domestic traffic.

By Mr. Colgren:

Q. Do I understand it is no longer "a small percentage" as he previously testified?

Mr. Langdon: Go ahead.

The Witness: He does not have the tonnage of the traffic moving in the carfloats. I don't have the percentage.

Now, the time study we made indicated that I believe there was 36 per cent of the tug time involved in towing floats, the major portion of which is domestic traffic and 60-some per cent was involved in towing of lighters.

By Mr. Colgren:

Q. Now, Mr. Talbott, let's just discuss lighterage traffic for a moment. What percentage of your total lighterage traffic, including domestic as well as waterborne; that is, export-import, intercoastal and coastwise traffic, is domestic?

A. About 17 per cent would be general traffic.

[fol. 2100] Q. That is over-all traffic?

A. General traffic passing through the lighterage piers.

Q. I don't understand what you mean by "general traffic." I wonder if you can supply for me the percentage of your total traffic given lighterage service including domestic, export-import, coastwise and intercoastal.

A. I don't know that I have those figures with me. We can furnish that for you.

Q. I would like very much to have that figure.

Mr. Colgren: May we have that understanding, Mr. Langdon?

Mr. Langdon: It is computable from the record right now.

The Witness: I think it is. We can compute it.
The bulk cement is a factor in that.

By Mr. Colgren:

Q. That is right, Mr. Talbott, CNJ does have a pretty large amount of bulk cement transported by lighter, does it not?

A. By lighter.

Mr. Colgren: If that figure is computable from the exhibits, I won't insist on it, but, frankly, we can't quite reconcile all the tonnage figures that have been made available to us.

Mr. Langdon: What are you missing now? Where is your difficulty with reconciliation?

That is what we undertook to do in EMT-8 and 9, and 11 also, that concerns the Pennsylvania.

[fol. 2101] Mr. Colgren: Yes, Mr. Langdon, we propose to go into the questions that we have with reference to those particular exhibits later on.

Right now, of course, I am anxious, if at all possible, to have the percentage of domestic versus total lighter traffic.

Mr. Langdon: We can furnish it.

Mr. Colgren: Mr. Myskowski advised that he feels he can come to that percentage, so perhaps we can drop the matter.

By Mr. Colgren:

Q. Mr. Talbott, if you will please refer to page 11 of your testimony, in the first full paragraph again you refer to certain tests conducted by the B and O and CNJ. Does your answer still stand that these tests are reflected in the exhibits accompanying the testimony?

Maybe I should ask: Do you have any tests that aren't represented by your exhibits?

A. The results of these tests are reflected in my exhibits.

Q. Yes. Mr. Talbott, still on page 11 of your testimony under the general heading of "The marine expenses are solely related expenses," in the very first sentence under that heading you say:

"Aside from the high degree of variability of the marine expenses,"—

what variability are you referring to there?

A. My exhibits indicate that there is not much change in [fol. 2102] the tons per lighter during all these years, so that would seem to indicate that as traffic goes up you require more lighters and there is a variability in the expense related to business.

Q. Yes, of course. Now, your Exhibit refers to "traffic consists" and so on. Are there any related to those considerations of traffic in your exhibit?

That got rather complicated.

There are no expenses related to the traffic statistics in the exhibit you just referred to, are there?

A. No. No, I have not related those traffic statistics to expenses.

Q. Yes.

A. But, naturally, the expenses increase from year to year. They are there.

Q. Now, Mr. Talbott, in that same paragraph on page 11, you indicate that "irrespective of the variability of these expenses" that you are talking about "they are chargeable 100 per cent to the export-import traffic at New York on a pro rata basis."

Now, Mr. Talbott, is it your understanding that you can distribute solely related costs on a pro rata basis?

A. What we are saying there, in other words, is that the marine expenses are related to the water-borne movement. We have adjusted the expenses on a unit cost basis to eliminate that portion of the marine expense which applies [fol. 2103] to the domestic traffic.

Q. When you say "solely related marine expenses," is it your concept that anything that has anything to do with water operation in the harbor area is solely related to those marine expenses?

A. Any marine expense in the harbor area is directly related to the traffic that requires it.

Q. Yes. Now, as you indicated a little previously, we have domestic traffic, we have export-import traffic, we have

coastwise and intercoastal traffic, all requiring certain marine expenses in the New York Harbor area.

Are those expenses solely related to export-import traffic?

A. As I said before, they are solely related to the traffic that requires it and we have made proper allowance in our cost for that portion of the marine expense which was applicable to the domestic traffic. So I think the way we have treated it is the proper way to treat it.

Q. You understand by your position that you can pro rate solely related expenses?

A. I think it is proper to pro rate solely related expenses when you can confine them to the traffic that requires those particular expenses.

Q. If you can do that, Mr. Talbott, why do you have to pro rate it?

A. Well, we use the word "pro rate" there but we arrived [fol. 2104] at the part to be assigned to the domestic traffic and the import and export traffic on a unit cost basis, which I think is a logical way to do it from a cost standpoint.

Q. I don't understand that this use of the word "prorata" in your testimony refers to the determination as among units, a unit cost.

A. That is what it refers to.

Q. I am afraid that sentence does not make much sense to me if we use "prorata" in that sense.

A. Well, we arrive at a cost per ton for all of the traffic lightered, for example.

Q. That's right.

A. And then we assign to the import and export traffic the cost based on multiplying the number of tons by the cost per ton. So in the end that becomes a proration. It wasn't done exactly that way but that is what it becomes finally.

Q. Yes, Mr. Talbott, but initially you have arrived at your costs on a solely related theory, is that right, before you make this pro rata basis?

A. That is correct.

Q. Maybe we can approach it from this standpoint: You indicate that you have prorated marine expenses between import-export and domestic traffic. Is that right?

A. Ultimately we arrive at that result. It wasn't done in that way.

[fol. 2105] The way I explained before, it was done.

Q. Mr. Talbott, if you had no domestic traffic, would you save the exact number of dollars you have assigned to domestic traffic?

A. I think you would save more because I think it costs less to handle domestic traffic, in my judgment.

Q. Mr. Talbott, please refer to page 12 and your reference there to your Exhibit EMT-3, which are excerpts or extracts from Senate Document 63.

It is true, is it not, Mr. Talbott, that the first two pages of written matter of that exhibit refer to past periods of rapid changes in development of railroad facilities?

A. They refer to the past periods but I think we are in rapid development in changes of railroad operations.

Q. Well, I am confining my question to the data in your exhibit.

A. Yes.

Q. Incidentally, this does not go beyond 1939 or 1940, does it?

A. Senate Document 63 does not, but, of course, the same theory is picked up in statement 4-54 in arriving at the variable expenses and they include some later years than that.

Q. Yes. It is true, is it not, that the first two pages of written testimony refer to past periods of rapid change in development of the railroad facilities?

A. They refer to past periods.

[fol. 2106] Q. In those past periods there was a tremendous development of railroad techniques, was there not, Mr. Talbott? For instance, didn't they start laying rails on ties instead of on the ground, and a few things like that?

A. I don't recall the time when they laid ties on the ground, as you say, or rails on the ground.

Q. Rails on the ground.

A. You are getting back before my time.

Q. We won't press it too much. But the extracts from the writers, and so on, disclose that they are talking of periods back in the early 1870's and so on, with reference

to major changes that are taking place and the rapid changes, and the concept of locomotives, and so on.

A. I will agree that they are talking about previous years, 1890 and probably 1941, and that is as far as I can remember.

Q. Shall we look at page 1 and just pick out a couple of dates like in the middle of the first column, 1887, I see in brackets. That strikes my eye.

A. That is correct.

Q. On the next page in the first bold page "1874" strikes my eye. And so on. Isn't that right?

A. Those years are in there but just what use are made of those years in the final result, I am not convinced that anything in 1874 and '90 reflect themselves in the final results of this exhibit.

[fol. 2107] Q. All right, sir. On the third page of printed matter under a subtitle reading, "Reason for Part of Costs Remaining Constant with Traffic Change."

A. Pardon me. What page is that?

Q. It is the third printed page.

A. They have numbers over in the left hand corner.

Q. It is page 48.

A. O.K. What was the question, Mr. Colgren?

Q. I haven't asked one yet. But I would like to refer to that portion of the study under "Reason for Part of Costs Remaining Constant with Traffic Change." Now, Mr. Talbott, it says, that the failure of costs to rise as rapidly as the traffic volume is attributable to two factors; first, the use of the carriers' unutilized capacity, and secondly, the increasing efficiency of the larger plant as compared to the smaller plant as the facilities are expanded."

Mr. Talbott, has there been much change in the New York Harbor area of facilities since World War II?

A. You mean the whole New York Harbor?

Q. Yes. Maybe that is too broad. Let's stick with the B and O and the CNJ. Has there been any marked change in the facilities since World War II used by those two railroads?

A. I know one lighterage pier that was used during World War II is not now being used.

Q. Is it still in existence?

[fol. 2108] A. No.

Q. It has been destroyed, has it?

A. Some, and some property in connection with the lighterage yard has reverted to the city, Jersey City, on account of non-payment of taxes.

Q. Have you any idea of the proportionate size of these properties that are no longer in existence or in use by the B. and O. and CNJ?

A. I do not.

Q. Do you think it is possible, under the present facilities, that the B and O and CNJ could render service comparable to what they did in World War II, given the necessary traffic?

A. I don't know to what extent they could. Of course, during World War II, there were lots of embargoes against New Jersey—Jersey City—so it takes in a broad operating problem there.

Q. But will you agree with me that there is a tremendous amount of tonnage handled through the Port of New York, and I would presume a fair proportion was handled by the B and O and CNJ during those war years.

A. That is correct, there was.

Q. Incidentally, hasn't the B and O recently expanded some of its facilities or added new facilities in the New York Harbor area?

A. You may be referring to a pier station.

Q. That was one thing I had in mind.

[fol. 2109] A. 160. That is not involved in this import-export traffic.

Q. No, I am speaking generally now, cost theories, Mr. Talbott.

Mr. Talbott, are the present facilities of the B and O and CNJ fully utilized? Could you handle additional traffic if it were tendered to you?

A. In 1956, when this study was made on which the costs were based, the facilities were utilized probably not to the maximum extent every day in the year, but there were lots of peak days throughout the year when they were pretty well utilized.

Q. Are we speaking of facilities or equipment? I am talking more to facilities, yards, piers, wharves, and so on.

A. I think we developed that the storage facilities in the yard were not fully used in 1956 and we made an adjustment on the credit by allowing more credit for storage in that yard which developed later on.

Q. Yes. Well, that is not precisely what I had in mind, Mr. Talbott.

On page 1546 of the record, you previously testified that the capacity of the Central of New Jersey lighterage yard at Jersey City was 1200 cars or a working capacity of about 800 cars.

Then on the next page, 1547, you indicate that the cars in the yard ranged from a low of 153 in one day to a high of 258 during the study month of March, 1958.

Let us just tie that information in with this statement [fol. 2110] that we were discussing on page 48 of your Exhibit EMT-3.

Your previous testimony indicated that there was not complete utilization of that particular facility.

The matter I have quoted on page 48 of your Exhibit EMT-3 gives the reason for the failure of costs to rise as rapidly as the traffic volume was attributed to the use of carriers unutilized capacity.

Later on, in fact in the next sentence, it says this, Mr. Talbott: "The orthodox explanation of the existence of constant costs is based on the first of these, namely, unutilized capacity."

Do you have any quarrel with that concept of economics?

A. I think in so far as it applies to the cost study in New York we have made an adjustment for the September 1956 volume of traffic so that it would represent an average year, made adjustment in the cost.

We have to admit there are certain days of the year and certain parts of the year where there may be unutilized capacity in the yard. You certainly can't build a railroad facility to cover the average conditions. They have got to be there to cover the peak conditions which occur throughout the year.

Now, that is exactly where the solely related theory comes

into play. This lighterage pier is there for the purpose of serving water-borne traffic.

Q. Yes, Mr. Talbott.

[fol. 2111] A. If there was no water-borne traffic there would be no lighterage pier.

Q. All right, Mr. Talbott, but it is also a reason why costs don't rise as rapidly as traffic volume, isn't it?

A. Over a long term basis, those things tend to wash themselves out.

Q. Well, all right. Now, on that same page 48 of your Exhibit 3, in the second column in the first full paragraph, about the middle of that paragraph, Mr. Talbott, there is a statement reading, and I quote:

"This is occasioned in part by the lag that may exist between the time the change in the volume of traffic occurs and the period when management can effect an adjustment of the expenses; and in part by the fact that any given size of staff can handle changes in traffic volume within a limited range, and as long as that range is not exceeded the expenses remain unaffected."

That is speaking of the fact that certain items of expense are irregular in the effect of volume.

Do you have any quarrel with what I read as a matter of practical truth?

A. I agree that there are certain fixed properties which you cannot tear down half of it when traffic falls off and rebuild it when traffic picks up again. But, as I said before, [fol. 2112] there the solely related feature has a prominent part in determining these costs.

Q. Now, Mr. Talbott, will you refer to page 50 of your Exhibit 3. Will you refer to that portion on that page which was apparently enclosed in a bracket prior to its reproduction. Do you find what I have reference to, Mr. Talbott?

Exam. Boat: Did I hear an answer to that question?

Mr. Colgren: He nodded.

The Witness: What was the question?

By Mr. Colgren:

Q. I didn't ask a question. My last question was whether or not you had found the reference.

A. I was asleep, I guess.

Q. Now, Mr. Talbott, the bracketed statement is that:

"Where the traffic under study constitutes substantially the total traffic a carrier handles on a portion of its system, the out-of-pocket costs constitute practically 100 percent of the cost of operating and maintaining the lines affected."

That is followed by a sentence reading:

"Branch lines serving coal mines are an illustration of this situation."

And a further sentence:

"Where a carrier's entire system of traffic is under study the carrier's total costs constitute the out-of-pocket cost of handling the traffic."

Would you compare the traffic receiving marine services [fol. 2113] in the New York Harbor area with coal on a branch line extending out to a coal mine?

A. In a sense it is comparable. I mean in this way: There are certain facilities and costs at New York which are required by the waterborne traffic, just like the branch line may be required for the coal traffic.

Q. All waterborne traffic, is that right?

A. All waterborne traffic and where you have a branch maybe required for all coal traffic, so both cases can properly be considered as solely related to the total.

Q. To all waterborne traffic?

A. That is correct as we have said, but we have eliminated from those total costs involved in performing the water movement in New York the portion applicable to the domestic traffic.

Q. Incidentally, Mr. Talbott, while this occurs to me, are you satisfied that the title of your Exhibits EMT-1 and 2 accurately describe the costs that you have developed therein? As you say, Mr. Talbott, the exhibit is entitled: "Revenues, Out of Pocket Costs and Ratios of Representa-

tive Movements of Import Traffic Terminating in Differential Territory" for your Exhibit 1, and a similar heading for "Export Traffic" on your Exhibit 2.

Have you any thought that that should be corrected to more clearly reflect what the costs are represented in that [fol. 2114] exhibit?

A. No, I don't. I think that if you have a cost which is solely related to a particular commodity, you have a right to consider that in the same category as out-of-pocket costs, and I have no objection to that.

Q. Do you feel, then, that under your statistical or accounting approach to this thing that the solely related costs are the same as out-of-pocket costs?

A. I think for the purposes of this exhibit they are, yes.

Q. All right. Mr. Talbott, in effect, you are saying when we tie this back with your 100 per cent application of costs to this waterborne traffic as indicated on page 8 of your testimony those portions that you are applying to the extent of 100 per cent you are in effect saying that they are fully distributed costs too, as well as out of pocket and solely related, are you not?

A. I don't think so.

Q. How do you distinguish between these?

A. The fully distributed cost, I think, is generally understood to take in that 20 per cent of the total cost. It does not appear to vary with traffic increases.

Q. Yes. That is assuming that the 80 per cent average developed and sponsored by the Interstate Commerce Commission is accurate or good enough for general use, is that right?

A. That is correct. But I haven't seen anything in the [fol. 2115] way of a study which even approaches determination of an out of pocket per cent except this study produced by the Commission. So we have nothing else to work on but that.

Q. I did not want to get off on that tangent, Mr. Talbott. I was just wondering how you differentiate, if at all, between your application of these costs and whether or not they are not now the same as fully distributed and what you choose to call solely related and out of pocket. You have indicated that you thought that your title on your

Exhibits 1 and 2 was correctly described as out of pocket costs which would make your solely related basis and your out of pocket costs basis synonymous. And now when we refer back to your disposition of the operating expenses, rents and taxes, you have applied 100 per cent to the marine portion of those expenses on this solely related basis. So that in effect is fully distributed cost, is it not?

Mr. Langdon: If I may interrupt here for the sake of clarity. I apologize for doing so, but when you use the words "fully distributed," Mr. Colgren, do you mean that we are taking 100 per cent of the operating expenses for this particular operation or do you mean that in addition to taking 100 per cent of the operating expenses for this particular marine operation we also have assigned a pro rata part of the deficit services which are properly included in the Commission's definition of fully distributed costs? [fol. 2116] What do you mean? I think you have to define your terms.

Mr. Colgren: Well, I think, Mr. Langdon, it is the province of the witness to define the terms.

Mr. Langdon: It is your obligation to ask clear questions, I think. And I think for the sake of the record it would be helpful if you would define your terms when you use them.

By Mr. Colgren:

Q. Mr. Talbott, will you refer to page 51 of your Exhibit 3. There again I refer you to the second column, the material that is bracketed.

The first sentence I draw your attention to is in the second paragraph which reads: "The same principle is widely applied in abandonment proceedings."

Now, Mr. Talbott, I don't think it is necessary to go back there referring to this same proposition of out of pocket costs considerations. There we have an indication that these various theoretical ascertainments of cost are management tools, isn't that right?

I have in mind—Let me say this, Mr. Talbott, I am merely trying to explore with you this solely related cost concept that you have advanced here.

If management were faced with the desirability of ascertaining the total cost of doing business in the New York Harbor, for instance, say, B and O management, when you developed the total cost of doing business in the New York Harbor area and presented that to management's considera-
[fol. 2117] tion, what would you have? I mean how would you describe that total cost? Would that be an out of pocket basis or solely related basis, fully distributed?

A. That whole question would depend upon the use that would be made of it, what they wanted it for. You know there are a lot of ways to approach cost studies.

Q. You are saying, then, that depending on what they wanted to use the study for, you would develop the costs in different ways, is that right?

A. What I mean is, you would take in certain elements probably.

That is a pretty broad question.

Q. Well, it is a broad subject.

A. When you are talking of operating in New York Harbor, we would have to go very far. We know what that is probably.

Q. You say "probably." Do you?

Now, suppose, for instance, management wanted these costs to determine whether or not to actively solicit traffic for termination in the New York Harbor area. What kind of costs would you develop for their consideration?

A. I think we would develop costs pretty close to what were developed here.

Q. In other words, what you have described here as solely related costs?

A. We would have to in regard to some of the traffic because we know that their marine operation is very tight.
[fol. 2118] In fact, since this study was made in 1956, we had added several lighters and several floats to the fleet and even through 1957 we were still hiring lighters from other railroads in New York Harbor. All that has to be taken into account. It would be a broad study.

Q. What you are saying is, then, that in connection with the costs necessary to be recouped by additional traffic if management elected to solicit additional traffic for the New York Harbor area, would be based on consideration of the

amount of marine equipment you have available, the maximum utilization of the plant?

A. If we were soliciting a block of traffic to disturb the operation, we would definitely have to take that into consideration.

Q. Yes; by the same token, you would take into consideration the fact that your plant was not fully utilized, wouldn't you?

A. Not fully utilized every day in the year.

Q. I mean if that were the case you would so consider it, wouldn't you?

A. Yes, if it was not fully utilized every day in the year, not just an average condition.

Q. Now, Mr. Talbott, would it make any difference in your method of ascertaining costs whether or not the proposed traffic which may be available and which your management is debating whether to actively solicit or not, [fol. 2119] whether that was competitive traffic or not?

A. Well, you are talking about a traffic matter. I assume we always solicit traffic if we can get it, if we can handle it.

Q. I am talking cost ascertainment. I am not talking traffic matters. Now, you, as a cost man, are called upon, I am sure, to advise your management with respect to certain matters along the lines that we are discussing here.

Now, assume if you will that there is a certain amount of traffic which is deemed to be available if your company would like to actively solicit it. Under those circumstances, would you approach the cost ascertainment problem by taking into consideration the fact that this would be competitive traffic as against captive traffic?

A. Well, there is no question in so far as the water movement is concerned.

Q. Yes. That would be an element of consideration, wouldn't it, in your ascertainment of costs?

A. What I meant to say was, we could definitely use the cost developed in this cost study for additional costs in so far as waterborne operation is concerned, the marine operation.

Q. Yes.

A. We would have additional costs.

Q. Suppose your management wanted to have informa-
[fol. 2120] tion as to whether or not they should abandon the operations in the New York Harbor, would you develop the same cost study for their consideration as you did in the solicitation of additional traffic, competitive traffic?

A. Are you talking about all waterborne movement, all waterborne traffic, pier station traffic, domestic station?

Q. Broad subject.

A. You are making a question complicated by including in a lot of traffic which has no relation to the issues in this case.

Q. Oh, yes, it does, Mr. Talbott. I want to know whether you distinguish between the methods that you ascertain costs as to the purpose for which the costs are being ascertained. In other words, Mr. Talbott, I am not trying to confuse you. I don't want to get confused, either. Let's put it this way: Is it not true that the ascertainment of costs for consideration of management is influenced by the purposes for which management wants those costs ascertained?

A. Probably there would be something to that, depending on what they have in mind doing.

Q. Precisely so.

A. It is a broad question and it would take an extremely broad answer.

Q. Let's take it down then again to this proposition that in one event management wants some assistance in deciding whether or not to abandon the services in the New York Harbor area.

[fol. 2121] A. In the whole operation?

Q. Yes. Then on the other hand, they would like to have some information as to whether or not they should actively solicit some additional competitive traffic.

A. Now you are getting two different questions.

Q. Terminating in the New York Harbor area. Of course, there are two different things. That is my whole point.

Mr. Langdon: He did not say there were two different things. He said they were two different questions. Let's ask them one at a time or at least ask them in a way so that the witness understands what is in your mind.

By Mr. Colgren:

Q. Do you understand what I mean, Mr. Talbott?

A. I would rather you repeat the first question.

Q. Well, it is all one question actually. I am asking you if your management wanted costs ascertained for the purpose of determining whether or not they should abandon all services in the New York Harbor area, would you provide them the same cost ascertainment as you would if they were to ask you for a cost ascertainment upon which they could determine whether or not to solicit actively some available competitive traffic?

A. I think there would have to be a lot of considerations taken into account, abandonment of piers and selling of boats and you wouldn't have the same situation.

Q. I think you are right. I agree with you.

[fol. 2122] A. You have to figure on retiring your boats, selling them for scrap, and selling your facilities if you intended to get out of business. That certainly wouldn't be the kind of study you would be making if you were soliciting traffic.

Q. Thank you, Mr. Talbott.

Mr. Talbott, will you please refer to page 60 of your Exhibit 3?

Mr. Talbott, in the summary on that page, we find this statement that

> "Based on the data reviewed above the conclusion is reached that on the average the out-of-pocket operating expenses, rents, and taxes for all class I carriers constitute between 70 and 80 percent of the total of these expenses."

Then it describes the variations between the Southern and Western and Eastern districts, and ends with the observation that:

> "On the other hande the out-of-pocket portion of the expenses on lines of light traffic density or on branch lines will be lower than the figures indicated."

Have you any quarrel with that summation on the part of the Commission?

A. Where is that?

Q. That is in the summary to Appendix B, from Senate Document 63.

[fol. 2123] A. I have no study indicating that is so. That is just a statement there. I don't know what facts they have to support that.

Q. Will you turn to page 75, please? In the first column of that page, the first sentence in the second paragraph heads, and I quote:

> "The freight out-of-pocket operating expenses, rents, and taxes developed for all class I railroads in this proceeding are based on 72 percent of the total of these expenses. This percentage was computed by applying to each account the applicable percentage shown in appendix E hereto."

I continue to read:

> "No change has been made in these figures by reason of the further research reviewed in chapters XI and XII as they are within the range referred to in the preceding paragraph."

And that range, incidentally, is from 70 to 75 per cent.

Mr. Talbott, this Senate Document 63 was the basis, was it not, for the development of the Form A cost formula as we now know it?

A. I believe it was.

Q. Do you know the genesis of the 80 per cent out of pocket factor that the Commission has adopted and approved for application generally to cost studies?

[fol. 2124] A. When you speak of the genesis, I suppose you mean the development of the 80 per cent which appears in this statement 4-54?

Q. Yes.

A. Well, I have read it a lot of times and am generally familiar with it.

Q. Do you know where that 80 per cent came from?

A. The conclusions in this Statement 4-54 will tell you. It is mentioned in here. Based on these studies included in 4-54. The study of the various operating expense accounts

and their relation to traffic conditions. And they summed these all up and have arrived at a per cent of variable which is reported on page 85 of this Statement 4-54.

Q. I am not sure that I understand your last statement there. You say that those various per cents are added up?

A. Not added.

Q. Is that what you said?

A. They are brought together by territories and the Commission's conclusion appears on page 85 of this Statement 4-54.

Q. Now, the various tables that you referred to in 4-54, are they the genesis of the 80 per cent or are they checks that were made against the propriety of the 80 per cent?

A. I don't know which came first, but I do know the data contained in 4-54 is subsequent to the data supported by Senate Document 63.

[fol. 2125] Q. Yes.

A. They used it in later years to develop the factors. I would assume that what appears in Statement 4-54 has more value today in that respect.

Q. And the Commission still—when did the Commission start using the 80 per cent factor, if you know?

A. I think it was a small shipments case, if I remember correctly, when it was first used. I have forgotten.

Q. That would be about when?

A. 1945 or '46, if I remember correctly.

Q. Prior to the development of that 80 per cent factor, how did the Commission and the carriers go about determining out-of-pocket expenses?

A. Frankly, Mr. Colgren, I don't think too much use was made of it previous to 1956. I have been associated with commerce cases and I don't recall too much use being made of it before 1956.

Q. The 80 per cent factor?

A. Any factor.

Q. People did make ascertainments of out of pocket costs, did they not, prior to '45?

A. I suppose they did.

Q. But you don't know how they did that?

A. I do not.

Q. Mr. Talbott, with respect to the application of so-called

[fol. 2126] rail form A, are you familiar with a method followed in order to ascertain out-of-pocket costs?

A. In a general way. I have applied it from time to time but not real recently.

Q. Is it within your knowledge that if you applied a straight Form A method of determining out-of-pocket costs you applied the individual per cents found in Appendix E to Senate Document No. 63?

A. You mean that is the way it is done today by the Commission?

Q. It is not done that way by the Commission today. They use over-all per cents. We couldn't quarrel with that.

I am saying if you were to work it out without that approximate figure.

A. Mr. Colgren, somebody may use those obsolete per cents but in the first place, many of them, to put in plain language, were grabbed out of the air. I have worked some years and months to find out where they came from. There was no academic basis for them in the first place, a lot of them, simply judgment factors.

Now the Commission has presented something here on which they have made a scientific study to produce something.

I certainly would think this would have more weight than those obsolete per cents.

Q. Mr. Talbott, what made those per cents obsolete?

A. Cost accounting has been progressing over a period of years.

Q. Yes, sir.

[fol. 2127] A. And I think there has been a lot of time put on the development of cost data and methods of determining them.

Q. Yes, sir.

A. And I think that one thing that made them obsolete is the fact that we had no academic or real basis for them in the first place. I personally hesitated to use them in many instances because I tried to find out where they came from and couldn't find anything to support most of them.

Q. Are you familiar with all the footnotes in connection with tables in Appendix E?

A. Yes, I have read them.

Q. You don't think that those are authentic sources of the per cents?

A. A lot of them were not based on factual conditions, they were judgment factors.

Q. Mr. Talbott, in connection with what we have been discussing, on page 75, you apparently don't consider the 72 per cent as any, what shall I say, justification or verification of the 80 per cent approved and adopted by the Commission as a sort of rule-of-thumb out-of-pocket cost factor?

A. I prefer accepting the data developed in the statement 4-54 as the basis.

Q. You don't attach any significance to this statement at all, then, apparently?

A. No, it is about 18 years old now, and getting pretty [fol. 2128] fuzzy.

Q. Mr. Talbott, incidentally a sound theory does not become obsolete, does it, with the passage of time?

A. A sound theory could become obsolete when you have better factors on which to base your theory than they had when they arrived at this theory.

Q. All right, sir. Now—

Exam. Boat: Mr. Colgren, is that a convenient stopping place?

Mr. Colgren: Yes, I think so.

Exam. Boat: We will recess until 1:45.

(At 12:30 p.m., a recess was taken until 1:45 p.m., of the same day.)

[fol. 2129] AFTERNOON SESSION 1:00 p.m.

Exam. Boat: We are ready to resume?
Mr. Colgren: Yes, sir.

E. M. TALBOTT resumed the witness stand.

Cross examination.

By Mr. Colgren:

Q. Mr. Talbott, when we left off I think I was just going to refer to page 78 of your Exhibit No. 3. Mr. Talbott, on that page there is the footnote No. 95 which is a reproduction of Dr. Dan Phillip Locklin's summation of the economic factors involved in the determination of a demand schedule under which the maximum contribution may be had from so-called "preferential rates."

Can you read that, Mr. Talbott?

A. You mean the whole footnote 95?

Q. Yes. I do not want you to read it out loud. I want to ask you your opinion of the economic theory expressed there and whether or not you agree with it.

Particularly, Mr. Talbott, I have reference to the last two sentences, and I quote:

"If the distinction between constant and variable expenses has been fully grasped, it will be apparent that preferential rates relieve rather than increase the burden on other traffic if two conditions are fulfilled. Those are [fol. 2130] that the rate must more than cover the direct cost; and that the traffic will not move at higher rates. When those conditions are fulfilled, preferential rates are of benefit to all concerned."

In the light of the rest of that footnote, do you have any quarrel with those three sentences I read?

A. Well I can't, Mr. Colgren, because my purpose was to develop cost, and this deals with rate making.

Q. Yes, but here, Mr. Talbott, we are talking about several different concepts of cost. That is the distinction

and the application of out-of-pocket versus solely related, and then of course there is the third, fully distributed or total costs which enter the picture.

Now here it would seem that Dr. Locklin is indicating that where rates will be fixed that will move traffic which might not otherwise move, that an out-of-pocket theory will be of benefit in maximizing the net. I think that is a proper phrase to use in this connection.

Would you agree with that?

A. Well there again I think you have got to get back to the sentence to which that note refers and that reads:

> "The determination of that schedule of rates which will provide the maximum contribution toward the constant cost may be illustrated by the demand schedule shown in chart 22."

[fol. 2131] This note refers to that sentence. That sentence deals specifically with fixing rates.

Of course it is assumed that there will be no contribution unless you earn your out-of-pocket costs. So I think that is a matter of rate making.

Q. Well certainly it is. Of course it is. But the point in maximizing the return to the railroad is the important point, is it not?

A. Yes.

Q. In other words, will you agree with me that rates may be set which will move a certain amount of traffic, that at a lower rate proportionately more traffic may move, not necessarily proportionately, but some more traffic may move.

Conversely, at a higher rate you may forestall the movement entirely. Isn't that right?

A. Yes.

Q. Now here isn't it true that Dr. Locklin is pointing out that to gain the highest benefit to the railroad, and that is the most contribution toward constant costs, we have the necessity of placing the rates at some level over out-of-pocket costs, of course, but at that level which will produce the maximum revenue. I think that is a fair paraphrase of Dr. Locklin's statement here.

Would you agree with that?

A. It is assumed that the rates that you are talking about [fol. 2132] yield a profit, will yield a return, a return over out-of-pocket costs.

Q. Yes, that was part of my premise. Of course, they have to produce at least out-of-pocket costs, but the problem is in maximizing the net return to the railroad.

A. Well, I think logical to maximizing that return. But as I said before I am not a rate man and as I said before, this goes back to the heart of making rates. I put cost in this case.

Q. Dr. Locklin refers specifically to so-called "preferential rates." Now in that connection, Mr. Talbott, isn't it true that the term "preferential rates" connotes a specific treatment of the particular type of traffic that you are studying? In other words, a preferential rate would be in the nature of a commodity, a export-import rate.

Now Dr. Locklin is here talking particularly about the so-called "preferential rates." Do you quarrel with his philosophy in connection with that?

A. I think I made my position clear. I think that is a matter of rates, fixing rates.

Q. That is right, sure.

A. And simply put in a cost study. Fixing rates goes beyond me.

Q. Well, all right, let us see if we can tie it up here. You had put in a cost study in connection with what are [fol. 2133] in fact preferential rates inasmuch as import-export rates are on a different basis than domestic rates, is that right?

A. Yes.

Q. Now in your cost study you have chosen to assign what you call solely related costs, which in this instance approach fully distributed, but are at any rate over the out-of-pocket cost basis, isn't that right?

A. Well the costs I have put in are over the eighty percent basis.

Q. Yes. But actually, now referring back again to your exhibits 1 and 2 where you have entitled those as being out-of-pocket costs in connection with the import-export traffic covered therein, you have in fact made a combination of out-

of-pocket costs on the basis of Form A, standard Form A standards?

A. I want to withdraw the answer to my former question because I consider this solely related in that case to be out-of-pocket costs. I should have said so before.

Q. Yes. Let me pursue that a minute. You have, have you not, adopted Witness Heywood's computation for the out-of-pocket costs for the line haul and inland terminal portion of the costs of the traffic represented in those exhibits?

A. Heywood's and French's together.

Q. Mr. Heywood's study was based on eighty percent of the so-called fully distributed, right?

[fol. 2134] A. Right.

Q. Now in addition to that you have developed solely related costs in connection with the port services afforded that traffic in the New York Harbor area, is that right?

A. Yes.

Q. So in effect you have in your Exhibits 1 and 2 a combination of Form A out-of-pocket costs and solely related costs insofar as the New York port area is concerned, right?

Mr. Langdon: Part of the New York area is concerned.

Mr. Colgren: I will accept that.

By Mr. Colgren:

Q. You mean you have discounted the domestic portion?

Mr. Langdon: No, we do not mean that.

The Witness: The solely related applies to the factors set forth in one hundred percent, factors set forth on page 8.

By Mr. Colgren:

Q. Yes. Do you recall now, referring to those factors on page 8, wherein you differ from Witness French's allocation of costs? For instance, if my memory is correct, Mr. French used one hundred percent of all equipment

including marine and so on. That is in your return on investment proposition, is that right?

A. That is correct.

Q. And fifty percent of the fixed property which you used, is that right?

A. That is correct.

[fol. 2135] Q. Wherein do your figures differ then? I didn't read all the breakdown.

A. I think it was in agreement if I remember correctly. I would have to look at the papers.

Mr. Langdon: Do you understand the question?

The Witness: Whether I differ on the port costs.

Mr. Langdon: Mr. French did not put in any port costs. Isn't that your contention?

Mr. Bongartz: Can we clarify the percentages Mr. French used as opposed to the percentages Mr. Talbott used?

Mr. Colgren: As shown on page 8.

Mr. Bongartz: It is pretty obvious.

The Witness: What we have used is on page 8.

Mr. Langdon: Do you understand that?

Mr. Colgren: I am about to rephrase actually what I am trying to get at. I was only trying to establish here for purposes of going along the differences between your treatment of the expenses as shown on page 8 and the treatment that Mr. French testified in his opinion were proper.

By Mr. Colgren:

Q. Now isn't it true that under operating expenses, rents and taxes and the subheading "marine" you show one hundred percent applicable under your solely related cost theory, and Mr. French in using the Appendix E individual percents variable, arrived at an average fifty-eight percent. Does that strike your recollection as about right?

[fol. 2136] A. It was a lower percent. I do not recall what it was.

Q. And Mr. French used the eighty percent as you did for the items in your heading "all other—including New Jersey yards and Manhattan stations—".

I have been corrected, Mr. Talbott. That all other was included with the marine and together the sum total amounted to fifty-eight percent whereas you broke it down and used a different percent, one hundred percent to marine and eighty percent to all other, is that right?

A. I think the record will speak for itself. I think that is correct.

Q. I lost track of what I was aiming at. Excuse me, Mr. Talbott.

Now referring back to page 78 and the note 95 there on the second sentence in the quote from Dr. Locklin's book Economics of Transportation, read as follows:

"Prime or variable costs, on the other hand, fix the lower limit, below which the rate must not fall."

Now that is what I indicated before when we were discussing this that we must start with the assumption that the rate must cover at least the out-of-pocket costs. I am sure that is what Dr. Locklin's means by his "prime or variable expenses."

[fol. 2137] Mr. Bongartz: You will not dispute that proposition, Mr. Colgrén?

Mr. Colgren: We do not.

Mr. Langdon: Mr. Colgren, if it would speed the thing I am perfectly prepared to accept this statement of Professor Locklin as on our study. The question is what is the direct cost and over what period of time do you compute variability. This theory of rate making is certainly sound. We do not contest that.

Mr. Colgren: All right. I think we are square on that. I do not think we could contest it. I am merely pointing out these matters which I consider of importance for the consideration of the Commission and the Examiner as they relate to the solely related cost theory.

By Mr. Colgren:

Q. Mr. Talbott, if you will refer in your Exhibit 3 to page 1404, are you in accord with the limitations placed on the use of a suggested formula as shown in the second paragraph on that page in the last line of the first incom-

plete paragraph? Are you clear what I am referring to? Perhaps I had better read it to you, Mr. Talbott.

"The same consideration should be made in applying the unit costs for fixed charges which, within certain limits, will increase as the volume of business decreases and decrease as the volume of business increases."

Then the other reference I gave to you was toward the [fol. 2138] top of the page and it reads as follows:

"This method is adapted to problems not involving increases or decreases in traffic; however, should the problem involve a change in the volume of business it will be necessary to equate the indirect expense units inversely to such variation in the traffic to be handled."

A. What is the question?

Q. I merely asked if you were in accord with the limitations that are placed on the application of the various formulae suggested in this chapter?

A. I am in accord with the theory of determining the out-of-pocket expenses plus the solely related expenses when they relate to a facility required for the transportation of the traffic being studied.

Q. I do not believe that was entirely responsive to my question. In fact, I do not think it was responsive at all.

A. If it is consistent with this paragraph, I am in favor of it. Of course, you are taking something out of context. I think I will have to read again the whole paper or the whole article to see what we are driving at because this particular paper dealt with out-of-pocket expenses. I do not think it referred to solely related expenses at all, if I remember correctly.

If you go over to page 1418 it says under "Direct and [fol. 2139] Maintenance Expenses" the cost per ton handled is different in Table 3-A and should be applied only where traffic requiring such facilities is involved. That is under the subtitle of "Coal and Ore Wharves."

Under "Grain Elevators" it says:

"The cost per ton handled is given in Table 3-C and should be applied only where traffic requiring the use of such facilities is involved."

Q. That is pretty much in accord.

A. I think the general trend through there is that if he had the specific facility for handling the specific traffic that specific expense should be taken into account.

Q. A little while ago you suggested that perhaps we ought to look at the whole chapter or the purpose of the chapter. Let us for instance consider on page 1403 what is said there and see what we can discover as the real reason this chapter is included in the AREA reports.

Would you agree with me that this is an exposition of a method by which various tables of ready reference or however you want to describe it may be developed, through which management may readily and quickly determine the propriety of such proposed moves?

A. It might be considered a quick method for determining certain facts. It is all based on certain conditions and not specific traffic.

[fol. 2140] Q. I think you are right. It could almost necessarily have to be so, would it not, under the very format of the suggested procedure in this chapter? Isn't that right, Mr. Talbott?

A. Yes.

Q. In other words, it is the procedure that has been discussed and apparently the subject of a paper by various members of the association designed to help railroading management in their daily problems. Right?

So they developed various tables and quick formulae which will lead to the disposition of some problems as they may arise. In other words, let us refer to Table 3-A.

Did you mention 3-C. We will refer to page 1414. Now, here, Mr. Talbott, we find a table entitled "Average Cost per Ton Handled through Special Facilities" and it refers to coal and ore wharves, grain elevators, floating equipment.

Under each of those headings there are two columns indicating a cost for operation and a cost for maintenance.

Now in the very lefthand column there headed "Divisions" there are designations first, second, third, fourth, fifth. That I think you might agree with me refers to the divisions of the railroad.

Are you with me so far, Mr. Talbott?

A. I do not know what that division refers to. It might mean divisions of the expense compilations or something. [fol. 2141] Q. No.

A. Does it say in there what it refers to?

Q. Yes, I am certain my statement was correct that it refers to divisions of the or a railroad because these are merely sample tables, as you agree. Is that right?

A. Yes.

Q. Now here we have the Engineering Association of the railroads suggesting a formulation of various of these tables for the purpose of aiding management in determining what it would cost on the average to haul certain traffic. Is that right?

A. That was intended in the beginning. I do not know why it was ever issued, to be frank with you. I think it appeared in a publication by the AAR as a result of an engineering committee who made a study of the thing years ago.

Q. That is more or less an annual publication, is it not?

A. I don't think so. Yes, it is a report of the engineering section of the AAR, I believe. I do not think this particular compilation has been revised since it was first published.

Q. Actually I am not going to be concerned with the various percents. In fact, there are no percents here. These are specific dollar amounts in Table C. All I want you to agree with me is I want you to follow me through this proposition and see if you are in accord with our ultimate conclusion that we will be led to I think.

[fol. 2142] It is perfectly logical, isn't it, Mr. Talbott, for an engineering group of a statistical group, or however you want to designate it, to attempt to ascertain what the average cost at a given amount of traffic is involved in handling traffic through a certain facility. I mean it is understandable, is it not, that management must have some rules of thumb, some procedures by which to operate?

For instance, Mr. Talbott, let us just consider eighty percent of out-of-pocket costs which certainly you are familiar with in its application to proposed rate, competitive rate propositions. Doesn't your Traffic Department refer you to problems which would entail the determina-

tion of an out-of-pocket basis on which they can base the competitive rate?

A. You mean out-of-pocket costs?

Q. Yes.

A. Yes.

Q. Don't you think this is somewhat the same sort of proposition except that it is carried out in fairly fine detail and going into to not so much rate propositions but a method of advising management of their expenses of operation under various divisions of their railroad, one as against another, or through various specific facilities like coal, wharves, grain elevators, and so forth?

A. I think the report was made in good faith, but I think [fol. 2143] we have learned a lot since that time. As I said before and I happen to know a lot of figures were not based on academic studies. A lot of them were just based on judgment factors.

Q. Mr. Talbott, I am not referring to specific amounts here. I would not doubt but what these figures in these tables were just plucked out of the air. They are just illustrative numbers. I do not think they mean anything or refer to anything in particular.

It is the method that we are discussing here, really.

A. These cost figures in this Table 3-C, they may have a basis for them.

Q. They may have had but we would have to know what facilities they are talking about. They would, of cour vary with every railroad, would they not?

A. That is right.

Q. And differing locations on the same railroad?

A. That is right.

Q. And different divisions on the same railroad and so on. Isn't that right?

A. That is correct.

Q. Now my point in going through this, Mr. Talbott, was merely to see if we are in agreement that this method or formula or method of calculating the cost of moving freight traffic isn't in final analysis a sort of rule of thumb proposition for the guidance of management rather than [fol. 2144] an actual cost technique.

A. I mean this part of the appendix he was referring to.

Q. Yes.

A. I think it would require a lot of refinement to get a figure that would be of much value to management today. Of course all cost finding follows a general trend like this.

Q. I am in perfect agreement with what you said and I think that you mean as far as determining actual costs are concerned these would have to be refined far more than they are.

A. Oh, yes.

Q. I think that is right.

A. But making that statement I do not agree with percents included in here. I will withdraw that. Yet that just refers to the costs.

Q. Now, Mr. Talbott, will you refer back to your testimony again and refer to page 23, the last sentence preceding the last paragraph on that page starting with "In other words." You refer to the relatively small part of New York's export-import traffic which is loaded or unloaded directly between car and ship.

Can you tell me, Mr. Talbott, the percentage of Central New Jersey traffic which was loaded or unloaded directly between car and ship.

A. I have the figures in my working papers. I can calculate that.

[fol. 2145] Q. Can you give me an approximation?

A. You want the Central Railroad traffic, is that right?

Q. Yes, sir.

A. And your question related to the ore?

Q. No, I didn't restrict it at all. The percentage of those commodities which are loaded and unloaded directly between car and ship with reference to total tonnage.

A. At the time the study was made as shown on my Exhibit EMT-8 there is a total monthly average of 28,031 tons of scrap iron and import ore handled through the Central Railroad.

Q. That is the percentage of the total?

A. Central Railroad traffic amounted to 673,000 tons. That is around forty percent.

Q. You mean 67,000. I think you said 670.

A. 673,403 total tons for the year. Wait, that is 673,403 tons was the total for the year.

Q. The ship to car traffic was what percent of that?

A. About forty percent.

Q. On page 27 in discussing Witness French's unadjusted overstatement No. 7, down at the bottom of the page, you make three points. These points were why you did not include in your cost study this traffic.

The first reason is that it was a small proportion of the entire traffic. You have just indicated to me that it was forty percent. Do you consider that a small proportion?

[fol. 2146] Mr. Langdon: The percent for one railroad. How about the other railroads?

The Witness: The entire picture.

Mr. Colgren: Right now I do not know who is answering me, Mr. Examiner.

The Witness: I was going to give you the same answer. We were talking about the entire traffic in the New York Harbor.

By Mr. Colgren:

Q. Could you have some figures as to what the percent would be and the total traffic in the harbor that is transshipped from vessel to car?

A. I do not have it available.

Q. What did you base your conclusion on then?

A. Even though there are very limited facilities in the New York Harbor for handling that type of traffic.

Mr. Langdon: We have not an exhibit on that very point, Mr. Colgren. Let us get it nailed down right now.

Mr. Colgren: Mr. Examiner, I do not know who is the witness at this point.

By Mr. Colgren:

Q. Mr. Talbott, do you consider that the Central New Jersey has adequate facilities for transfer of ship-to-car traffic?

A. Yes.

Q. Is it the only railroad in the harbor?

A. I understand that the Lehigh Valley has some facili-

[fol. 2147] ties for that purpose.

Q. And the New York Central?

A. And the New York Central has facilities for that purpose.

Q. Have you found the statistics we were looking for?

A. I had it before me at one time when this was written. This statement shows that New York Central Railroad had 36,000 tons in the month of September 1956. New Haven did not have any. Erie apparently did not have any. Central Railroad had the amount shown on page 8 of my exhibit, 27,000 tons.

Q. In the neighborhood of 60,000 tons?

Exam. Boat: Which exhibit was that that you last referred to?

The Witness: EMT-8.

Exam. Boat: EMT-8?

The Witness: Yes.

Mr. Welsh: May I at this point ask a question. This last figure, 27,000 tons, was that the Central Railroad of New Jersey, did you say?

The Witness: Yes.

Mr. Welsh: Thank you.

Mr. Laux: May I see that when Mr. Talbott gets through with it?

By Mr. Colgren:

Q. Do you have any figures there for the Pennsylvania Railroad?

A. No.

[fol. 2148] Mr. Langdon: They are in there.

The Witness: Are they?

Mr. Langdon: Of course they are, EMT-11 for the Pennsylvania Railroad.

Mr. Colgren: Mr. Langdon, EMT-11 does not refer to ship-to-car traffic.

The Witness: No.

Mr. Langdon: I will find that figure for you. We will find it for you.

The Witness: I had the figure when we wrote that testimony, but I do not know where it is right now.

Mr. Laux: Mr. Examiner, when Mr. Talbott is through with that may I take a look at it?

By Mr. Colgren:

Q. Mr. Talbott, let us revert to my prior question then and suggest to you that 60,000 tons of traffic which you indicated was handled between the New York Central and CNJ, I believe, two of the roads that you had the figures for, is not an insubstantial amount of traffic.

A. It impressed me as being a small amount at the time this data was being written.

Q. Of course, I think we agree that it was forty percent of the Central New Jersey traffic.

A. I am speaking about the whole New York Harbor when this was written. No B&O traffic handled that weigh.

Q. That does not include Port Newark, does it?

[fol. 2149] A. Which does not include it, the figures I gave you?

Q. Yes.

Exam. Boat: The answer is no?

The Witness: No.

Exam. Boat: Speak out.

Mr. Bongartz: Mr. Examiner, it seems to me that if this is something Mr. Colgren wants precise answers on the opportunity should be given to correlate the various figures in the record and come up with it. There is not much point referring to a forty percent figure of Central New Jersey as being of any particular consequence when we are dealing with all the railroads.

Mr. Langdon: I think I may add, Mr. Examiner, that in Mr. French's working papers there was information on this point in regard to the other railroads. With the exception of New York Central I think they represent zero on the proportion of traffic handled direct from ship to car. The Erie and Lackawanna are railroads covered by that statement. We will be perfectly willing and glad to, and thought we had supplied the figures for the New Jersey Central and the Pennsylvania and the B&O on that.

Mr. Colgren: I think we are satisfied as the situation stands, Mr. Examiner.

Mr. Langdon: I do not know that we are. We want to get it straight.

[fol. 2150] Mr. Colgren: Mr. Myskowski has a few questions of Mr. Talbott now, Mr. Examiner.

Exam. Boat: Very well.

Cross examination.

By Mr. Myskowski:

Q. Mr. Talbott, is it your understanding that this proceeding involves rates, import and export traffic from CFA territory?

A. I think that is my understanding. As I tried to make plain before, I am a cost man and I put on the cost of moving traffic. I am not so much concerned with the making of the rate. It is somebody else's job.

Q. Mr. Talbott, at the time you previously testified on page 1540 of the record, you put in figures to show that of the total cars receiving a marine movement by the B&O and CNJ in the Port of New York, 16.41 percent of the cars were lightered and 83.59 percent of the cars received a floating movement. Do you recall those figures, sir? Would you like to refresh your recollection?

A. I do not recall the figures, but it sounds about right.

Q. So the total cars, only 16 percent of the traffic was lightered, is that right, sir?

Mr. Langdon: He is talking about all New York traffic. In other words, domestic and import.

The Witness: That is right.

By Mr. Myskowski:

Q. Would you turn to your work papers, Schedule E, [fol. 2151] Part B and C?

A. You mean the old work papers?

Q. The old or the new. The ones which show your marine expenses per ton.

Exam. Boat: What was that reference?

Mr. Myskowski: In the new working papers it is page 9, Schedule E, Part B and C.

Exam. Boat: Thank you. I have it.

By Mr. Myskowski:

Q. You there indicate, Mr. Talbott, that there was a total of 56,404 tons which received a lighter movement: is that right, sir?

A. That is correct.

Q. And of those 56,000, 23,705 were domestic cement?

A. That is correct.

Q. And in addition to that, Mr. Talbott, you indicate on Exhibit EMT-8 there were an additional 7,000 tons of domestic traffic other than domestic cement which received a lightered movement. Is that right, sir?

A. EMT-8?

Q. That is right, sir.

A. No, that is 7,000 tons receiving a domestic movement included in the 56,404 tons.

Q. I am sorry. Does not that 43,000 tons figure that you show on EMT-8 have cement excluded from that already? I think it is, sir, in a previous reconciliation that you showed.

[fol. 2152] A. I do not think it did. That is the tons floated in truck in lieu of lighter. That is 43,000 tons. That was the total.

Mr. Henry: Mr. Talbott, do you understand the question?

The Witness: He wanted to know if the 43,000 tons excluded the truck.

By Mr. Myskowski:

Q. I assume from that 43,000 tons you subtracted 7,152 tons which were lighted domestic freight which was lightered in addition to this 23,000 tons of cement.

A. The 23,000 tons is not in the 43,000.

Q. So that this is additional domestic tonnage, is it not, sir?

A. But that domestic tonnage is in the 31,000 which makes up the 56,000 shown on that.

Q. We are getting to it. So that you can subtract the

7,000 and the 23,000, making a total of 30,000 tons at least of this 56,000 which was domestic, is that right?

A. But the 7,000 tons is not in this 31,000 because it did not receive a marine movement.

Q. I beg your pardon, sir. I was under the impression that 7,152 did include the tons which received a lighterage movement.

A. The 7,000 tons did not receive a lighterage movement.

Q. How did those move?

A. Truck.

[fol. 2153] Q. I will have to go back. I was under the impression that all of the tons which were picked up were export-import. Am I wrong in that?

A. That is correct.

Q. What is correct? That they were export-import?

A. Yes.

Q. How can you tell me this 7,000 tonnage was tonnage that was trucked?

A. None of the import-export traffic was trucked in addition to receiving a marine movement. It received only one or the other.

Q. That is right. But of the total 7,000 which received trucking in lieu of lighterage, all of that was import-export traffic, is that it, sir?

A. That is correct.

Q. So this 7,000 tons of domestic traffic received a marine movement, is that right, sir?

A. The 7,000 tons domestic traffic received a marine movement, yes.

Q. That is added to the 23,000 tons, making a total of at least 30,000 out of the 56,000 tons which was domestic traffic. Is that correct, sir?

A. That is correct.

Q. So that more than half of the tonnage which was lightered was domestic?

[fol. 2154] A. That is correct.

Q. So that of the 16 percent which received a lighterage movement, at most 7 or 8 percent of the traffic which was lightered was export-import freight, is that right, sir?

A. From a tonnage basis, yes.

Q. And Witness Mollman's exhibit indicates that of a total of about 2,318,644 tons some 922,968 were import-export tonnage. I divided those and came up with a figure of about forty-two percent. That forty-two percent is tonnage going to and from CFA territory.

Then you get a total of something like three percent of import-export traffic to and from CFA territory which got a lighterage movement. Is that right, sir?

A. Eight times.

Q. Forty percent of eight would be about 3.2 percent, I would say. And you are here saying, Mr. Talbott, that the main expenses in New York are solely related to that three percent and the other ninety percent is incidental, is that right, sir?

A. I do not think your calculations are right.

Q. Would you like to check them. That is in the record. There is no point in disputing it. I can give you the exact tonnages if you would like them.

Mr. Langdon: Will you supply them? Supply the figures in that respect for your railroads.

Mr. Myskowski: We have gone into this so many times, [fol. 2155] let us stick with the witness.

Mr. Langdon: I just wanted to know if you wanted to develop the facts.

Mr. Myskowski: Page 32 and 96 of Mollman's Exhibit MLM-2.

Mr. Langdon: Are you contending that the bulk of the lighterage service at New York is concerned with the handling of domestic traffic?

Mr. Myskowski: And as far as the B&O and CNJ are concerned, that is what his figures indicate, Mr. Langdon.

By Mr. Myskowski:

Q. If those figures are correct, Mr. Talbott, then a little over three percent of the import-export tonnage to and from CFA territory covered by these rates receives a lighterage movement.

Would you like to go back over these figures, Mr. Talbott? They are your figures.

A. No, I do not think they are my figures. I do not think

the figures are correct. I think there is something wrong with them. They are not my figures.

Q. This is your testimony on page 1540.

A. I mean so far as you get the three percent. There is something wrong with that calculation somewhere.

Mr. Langdon: Are you standing on that proposition?

Mr. Myskowski: I am asking Mr. Talbott.

Mr. Langdon: You know that is not a fact.

[fol. 2156] Mr. Myskowski: Those are his figures.

Mr. Langdon: It is a trick computation with a misleading conclusion, and you know it.

Mr. Henry: Let us get at the facts. Why don't you supply for your railroad the information?

Mr. Myskowski: Let us find out where the trick is. These are your figures. You said the total traffic receiving the marine movement, only sixteen percent received a lighterage movement.

The Witness: What is that? The traffic receiving marine—

By Mr. Myskowski:

Q. It is right there in front of you. That is your testimony, Mr. Talbott. You wanted to show in showing the tug hours that you took a representative movement.

A. But the tonnage representing the sixteen percent is not anywhere else in my calculation.

Q. I know about that.

A. I mean the tonnage represented by the cars floated is nowhere in my calculations.

Q. Yes, I noticed that, Mr. Talbott.

A. I had no significance in this study.

Q. I was trying to figure out why you allocated or why you say that of the tug expenses the majority is attributable to this import-export traffic which is lightered.

[fol. 2157] A. I think that you were present at the hearing when we explained that, based on a cost study over sixty percent of the time involved—

Q. Was what?

A. —is in connection with the lighterage traffic.

Q. That is not true. If you look at that page it is exactly the opposite.

A. That is true based on the time study and the records show it.

Q. Mr. Talbott, your figures do not show it. If you look either there or on your original work papers, it is the reverse. Page 32 of your work papers.

A. If you refer to page 14 of this document I do not know how it has been numbered yet, it described the cost study that was made in which we allocated sixty-three percent of the time.

Q. To—

A. To car floats.

Q. That is right, sir.

A. And thirty-six percent to lighters.

Q. That was based on cars and you know you get a lot more.

A. That was based on hours of time, based on hours involved in hauling the traffic.

Q. I will agree with that, sir.

A. Not on cars.

[fol. 2158] Q. And you will agree that you get a lot more tons on the car float than you do a lighter.

A. Yes, but we didn't allocate any of this floating cost into this traffic, into this cost of handling this traffic because I think there were only six cars hauled on floats.

Q. That was of your export-import freight. That is exactly what I am trying to bring out, Mr. Talbott, that your marine operations are primarily for the benefit of your domestic traffic.

A. Our marine operations were established for handling import-export traffic, and if there was export-import traffic to be handled, there would be no marine operation in the City of New York as far as the B&O Railroad is concerned.

Q. How would you get it across the river?

A. By truck. There would be no marine operations because there would be no import-export traffic.

Mr. Langdon: You mean lighterage.

The Witness: Well, the lighterage operation, yes.

By Mr. Myskowski:

Q. How about stuff like steel and traffic that you cannot handle by truck?

A. We would not be interested in it.

Q. Are you taking issue with your own figures, Mr. Talbott?

A. I am not taking issue with my own figures, but I am taking issue with some kind of manipulation which results in three percent of the traffic moving import-export.

[fol. 2159] Q. If sixteen percent of the total cars are import-export, half of those, or more than half are domestic as shown by your working papers and fourteen percent of that total—sixteen percent which received the lighterage movement—

Mr. Macleay: Would you repeat it slowly.

Mr. Myskowski: Let us do it very, very slowly.

Your exhibit indicates that of the total cars receiving a marine movement, sixteen percent received a lighterage movement and the other eighty-three plus percent received a float movement. Is that right?

The Witness: That is right.

By Mr. Myskowski:

Q. If you will notice that figure of one hundred some-odd thousand is used again in your exhibit, I believe it is EMT-6. Mr. Talbott previously gave a sum total of 102,779 cars as having been floated during the year 1956.

Mr. Macleay: That is cars floated.

The Witness: That has no relation to import-export traffic.

Mr. Myskowski: I am trying to get the proportion receiving a lighter movement of the total receiving marine movement at New York. Your figures indicate three percent.

The Witness: Of course, that figure has no value then. What you are adding in are all these pier station cars and everything else.

[fol. 2160] Mr. Macleay: The car float business.

The Witness: The car float business.

Mr. Macleay: No wonder it didn't make sense.

The Witness: No wonder it didn't make sense. That is about the most nonsensical calculation I have heard today. I have heard a lot of them.

By Mr. Myskowski:

Q. There are marine costs at New York such as tug expenses, is that right, Mr. Talbott?

A. Repeat that again.

Q. Is it your contention that such things as tug operations expenses are solely related to this traffic?

A. I do not think I have said it just that way.

Q. How did you say it?

A. I have said the tug operation is solely related to the water in New York Harbor and we have allocated to the lighterage expense a portion of the tug expense based on the cost on this time study first, and then based on the cost of handling a ton of freight in a lighter. I just completed saying about the only reason for the lighter operation in New York is the import-export traffic because we would not want to be in that business if there was not any import-export traffic.

Q. Is it your position that if you lost this three percent of the traffic which is export-import to and from CFA, which is lighted, that you would forego the other ninety-[fol. 2161] seven percent and do away with the marine operations?

Mr. Langdon: The witness did not say that.

By Mr. Myskowski:

Q. What did you say?

A. The three percent figure has no value. Our portion of the traffic which is lightered I am sure is more than three percent of our total lightered traffic.

Q. That is not what I said. The total marine movement.

A. I do not know what that float of traffic has to do with my calculations.

Mr. Langdon: Would this be a good time for a brief recess?

Exam. Boat: Yes.

(Brief recess.)

[fol. 2162] Exam. Boat: Let's come to order, please.

By Mr. Myskowski:

Q. Mr. Talbott, the rates involved in this proceeding are not, so far as you know, restricted to any particular type of movement; is that right? The rates apply whether it is trucked, lightered, floated, or transferred by direct transfer; is that right?

A. They apply whether it is lightered or in lieu of lighter or floated in lieu of lighter. It would be the same rate under tariff restrictions.

Q. And if it were the same rate, it would still apply?

A. I am not acquainted with the rates on that. I am not a rate man and I don't know of any restrictions.

Q. You discussed these movements somewhere in your testimony, page 25, these four types of movement. Do you know of anything that would make you believe that tariff from CFA could not be handled directly between the car and the ship?

A. No, I don't know of any reason why it couldn't be.

Q. In your Exhibit EMT-3, the first column near the bottom, it says, "Out of pocket costs should be computed for all traffic to which rates apply." It goes on to say:

"In determining the out of pocket costs of handling a given volume of traffic, the study should embrace or take into consideration all of the traffic to which such rates will apply."

As I understand from the previous questioning, your study [fol. 2163] does not take into consideration any traffic that was directly transferred, is that right?

A. My cost study does not include the traffic which was transferred to the Central Railroads from ship to car and I made that very plain in my testimony.

Q. Mr. Talbott, your Exhibit EMT-8—you indicate that there was a total of 899,478 tons of import-export traffic handled by the B and O and the CNJ during the year 1956; is that correct?

A. I think that is correct. I have not found my exhibit yet.

Q. Is that correct, 899,478?

A. That is right.

Q. If you divide that by 12, I get 75,000 tons a month; is that right?

A. That is about right, if you divide it by 12.

Q. Lower down on that page, you indicate that the total lightered, floated and trucked in lieu of lighterage, after you exclude the domestic traffic comes out to 35,849 tons; is that correct?

A. That is correct.

Q. Is this 35,849 tons the total amount of import-export traffic embraced or included in your study?

A. Yes.

Q. So that is something less than half of the total which moved during a representative month or during that month [fol. 2164] if it were representative; is that correct?

A. That is correct.

Q. And you have taken the figures as you have developed them, based on this minority of the traffic or less than half of the traffic which moves by lighter or by truck or in lieu of lighter in the few tons which were floated and you have applied such costs against representative movements to and from CFA territory; is that correct, in your Exhibits 1 and 2?

A. Yes.

Q. If, as seems to be the story, the majority of the traffic moves directly by transfer from car to ship or vice versa and some of the traffic in your exhibits so moved, then your comparison is meaningless, isn't it?

A. No, I am not sure mine is but I am just wondering whether yours is.

Q. Which way?

A. We have an average of 67,000 tons of movement through the port in New York rather than 75,000. The figure shows on my Exhibit EMT-8.

Q. That is after you excluded some traffic?

A. We included some cargo.

Q. Why did you include it up above? I took your total

traffic and then after you excluded everything you came out with 35,000 tons.

[fol. 2165] A. I put in the cost study based on the way it is my understanding the majority of the traffic moves in New York Harbor. The majority of the import-export traffic requires a marine movement or trucked into a lighter or floated into a lighter, so it will probably continue to receive that type of handling.

Q. Your figures here indicate only 35,000 tons got a trucking in lieu of lighterage and of that amount really got trucking, did it not?

A. I was speaking of the majority of the traffic in New York Harbor and not necessarily the Central Railroad.

All the Baltimore and Ohio traffic was this lighter movement and a large portion of the Central Railroad traffic and I understand all the Pennsylvania Railroad traffic, practically all of it, if not all of it.

Q. How would you reconcile this 35,000 with your 75?

A. It reconciles itself on this exhibit. It does not need any further reconciliation.

Q. Am I to assume that the other 40 tons was moved through New York or Earle and Carteret or was it by direct transfers?

A. 37,000 tons were by direct transfer.

Q. Let's take your Exhibit EMT-1. On the first page there, let's take the third one. You have bananas. I understand there is a very, very substantial movement of bananas to CFA territory through the Port of New York. Is that right? Do you?

[fol. 2166] A. I don't know.

Q. Mr. Mollman's traffic study, MLM-2, indicates that out of a total of 645,792 tons, which moved to CFA territory through New York, 53,946 tons was bananas or about 8 per cent was bananas. You know that those are handled almost solely by direct transit by the New York Central, or do you know that?

A. I think we have priced them accordingly.

Q. According to what?

A. Assuming they were direct transfer. Yes.

Q. Where do you have costs for direct transfer, Mr. Talbott? Would it be in any of your work papers?

A. It appears on the summary of the provided work papers. I think you have a copy of them. The costs were developed on Pennsylvania Railroad. We did not have any of that type of traffic and the costs appear on this summary sheet, which I think you have.

Q. Am I to assume, then, that the cost for bananas was about $7-something per ton for direct transfer?

A. That is what it costs the Pennsylvania Railroad to do the job.

Q. On what page is that?

A. Page 1 of my composite costs by types of cars. You will notice that that is just a per car cost, and there is no per ton cost.

I understand that on the Pennsylvania Railroad that they [fol. 2467] transfer the bananas to cars on the float.

Q. In computing your average, don't you think there should have been included costs of such a method of transfer when it comprises such a broad proportion of the total moving?

A. We did not have any experience in that particular field. We did not handle any bananas that way and neither did the Pennsylvania Railroad.

Q. But where you included ores and scrap iron, you excluded that?

A. Yes, there is no mistake about that.

Q. Can you tell me if you wanted to determine whether or not this traffic is compensatory why you did not take the total revenues and total costs or average revenues and average costs instead of going through all of these mathematical gymnastics and excluding this or that and dividing that up by this.

If you want to show something is compensatory, you take the revenues and costs and compare the two.

Here you had all sorts of traffic moving in all sorts of movement and you included some and you excluded others.

Mr. Langdon: He included all involving the water service except the four which were excluded and those were excluded because we didn't have the movements.

Mr. Myskowski: Those comprise the majority of your movements. 75,000 is the average tons the way I figure it and you only have 35,000 in your cost studies.

[fol. 2168] Maybe Mr. Langdon wants to change it.

Mr. Langdon: If you will refer to page 29 of Mr. Talbott's statement, you will find the two export commodities and the two import commodities that were excluded in Mr. Talbott's study on the ground that we did not have the traffic data and I am speaking now of all commodities which received the water service at New York and which were handled in a volume greater than 1,000 tons during the year of the traffic study.

Mr. Myskowski: That is exactly my point. You confined your study to the traffic which received the water movement, Mr. Talbott's figures indicate that the majority did not receive the water movement.

Mr. Langdon: We are trying to price out and you know this as well as I do, we are trying to give an indication of the cost of handling this traffic by the Respondent carriers. According to your own shoping, at least three of your carriers handle all of this export-import traffic at New York in the very way we have undertaken to price out here.

Mr. Myskowski: Are you testifying now?

Mr. Langdon: No. I am simply trying to point out how unfair the question was that you asked and how confusing and misleading it was.

By Mr. Myskowski:

Q. Is your study here deemed typical of the volume of the other three roads?

A. To the best of my knowledge, it is typical of the water [fol. 2169] movement to handle it in the New York Harbor.

Q. Have you made any studies to substantiate that?

A. No, but investigations made indicate all railroads handle them in practically the same manner.

Q. Same consist?

A. I don't know if it is the same consist, but I would assume it is the same.

Q. In answer to a question by Mr. Colgren, you indicated your revenues shown in your Exhibits EMT-1 and 2 do not

include the increases granted in 212 either so far as line haul rates are concerned or the 6 cents additional charge; is that correct?

A. That is correct.

Q. Would you agree if you had included them that there would be an increase of maybe six or seven per cent in the revenues you show?

A. I wouldn't agree to any amount. Naturally, there might be some increase if you increased the revenue.

Q. An increase of 6 cents a hundred pounds on the terminal?

A. I don't know whether that is going to be applied universally. I haven't the slightest idea at this point.

Q. Do you mean you do not know on what traffic it would apply?

A. Maybe counsel can explain that. I don't know for a fact whether it is going to be universal.

Mr. Langdon: Serious consideration is being given to [fol. 2170] the withdrawal of the 6 cent charge by our company and other companies involved for competitive reasons and there may be an announcement on it tomorrow.

Mr. Myskowski: Have they gone into effect?

Mr. Langdon: I think the tariff became effective Monday morning.

By Mr. Myskowski:

Q. Mr. Talbott, on pages 8 and 9 of your statement, you say you have included in your costs 100 per cent of the marine operating expenses, first, because of the high degree of variability with the traffic of the marine accounts, and, second, because such expenses are incurred principally because of the requirements of export-import traffic at New York.

A. Yes.

Q. Do you still maintain that, for example, tug operating expenses are incurred principally because of the requirements of export-import traffic?

A. I have explained the way we have arrived at that. We have charged against the lighterage operation a por-

tion of the expense for operating lighters based on a time study.

Naturally, if we had no lighter traffic, it would reduce our tug expense approximately 36 per cent, the per cent which is assigned to lighterage operations.

During the year 1956, we had a severe shortage, not necessarily a shortage, but we were up against it with the [fol. 2171] marine equipment. We had a tight operation the entire year. We had five diesel tugs in operation and two standby steam tugs. On many occasions we had to use the two standby steam tugs particularly when the diesel tugs were out of commission. Any operation that requires 100 per cent use certainly must be considered as being solely related, so I have taken 36 per cent of the cost of operating the tug boats, the cost of operating all the lighters, maintaining the lighters and operating them, and I have assumed 100 per cent of that solely related to expenses, and I think that is proper cost accounting.

Q. Do you still believe these marine expenses are incurred principally because of the export-import traffic?

A. The portion that we charge against the lighterage operation is principally because of the import-export traffic and the part of the tugboat time that we charge against floats may not be, but just bear in mind the floating cost is a cheaper operation. We can schedule our floats but you are pulling lighters any old time of the day or night and you could have a uniform operation if you had nothing but floats to handle.

Q. You used the figure 36 per cent. That is for all lighter traffic, is it not, and your domestic is a majority, according to your figures, is it not?

A. It is a majority in tonnage but my costs are understated because I have included the tons of domestic cement [fol. 2172] in arriving at my cost per ton. I included it because we had no way of separating it on an actual basis, but those lighters haul about 340 tons of cement in the lighter whereas the other traffic averages considerably less than that. It averages around 80 or 90 tons to a lighter, so by including the domestic traffic tonnage in my divisor to get the average cost per ton, I have definitely understated the cost of import-export traffic.

Q. Of the half which was import-export, only 40 per cent or so really went from CFA, so that the marine expenses which you allocated would be considerably less than 36 per cent. It would be maybe 8 per cent Is that not right?

A. No, it would not be 8 per cent.

Q. Here we are involved only with the rates in CFA territory.

A. I don't know what percentage of traffic goes to CFA.

Q. It is in the record. It is 42.

A. Well, that is something else. That particular traffic is only getting its share of the marine expense.

Q. When you allocated these expenses on the basis of this tug study, did you also distribute such expenses as land operations on the basis of this 36-64 per cent?

A. No. We had specific facilities assigned to the float operations and we assigned them to the cost of operating the floats, and those facilities were used in connection with lighter operations. We went into the cost of handling [fol. 2173] lighterage freight. Those were assigned on an actual basis.

Q. Do you have your original working papers with you, such as page 9?

The first item there is land operations, joint. To me, as I read that, it seemed to me that you allocated that total on the basis of this tug study of yours. Am I incorrect in that?

A. We would have to trace back and see what was in that particular one.

Q. Page 32 is where you have your tug study. That is the reference given.

A. That land operation means a shore operation and not necessarily land or real estate. That means a shore operation.

Q. What would be included in that?

A. The marine management, the crew, dispatcher, tug dispatchers, timekeeper, electricity for the office, telephone service, officers, police protection.

Q. Do you think it is proper to allocate all of those expenses on the basis of the tug study rather than on the basis of tons or cars?

A. That was not distributed on the basis of the time study.

Q. That is what it seems to indicate here.

Where can I find something to the contrary?

A. Yes, that appears to have been distributed on the basis of the time study.

[fol. 2174] Q. Don't you think it would have been more proper to distribute on the basis of tons or cars rather than on the basis of tug hours when you know that the tug would be able to carry many more tons in a car float than they would in a lighter?

A. No, I don't. This land operation has to do with the use of tug boats principally, moving the lighters and the floats.

Q. I was talking things by electricity, timekeepers and all these other things you mentioned.

A. I think they relate to tug hours all right. I don't see anything wrong with that.

Q. In connection with your trucking costs, Mr. Talbott, can you tell me why you used such a confused method? Is it true that your trucking operations are performed by contract at a certain amount per ton?

A. Let's get the question cleared up. Where is it confused or complicated?

Q. I don't know how you arrived at it. You changed it from the previous study and divided 41,000 into the total previously and this time you divided 34,000 into it.

I am wondering why you just didn't take the contract price and say, "This is how much we paid per ton for trucking," instead of going through all these computations.

A. I thought this was a more simpler way of doing it.

Q. Do I understand that you came up with a figure of $5.60 a ton for your trucking costs?

[fol. 2175] I think you so testified previously.

A. Do you know where that appears in the record?

Q. I think you have my transcript there, Mr. Talbott, and it is in that portion there.

Can you tell me how much your trucking costs were per ton? It is at page 1536 of the record.

You say, "The actual number of tons trucked to and from Jersey City and St. George during December

amounted to 7,064 tons or an average cost of $5.60 per ton so handled."

Do you happen to know what your actual cost was based on the contract you had with the trucking firm in 1956?

A. That is it. Those are the bills we paid for that month's trucking.

Q. That is true but the way you computed it was to take the total paid and somewhere else you seem to have arrived at the tons. I think your total paid is shown on page 26 of your original work-papers. Is that right, Mr. Talbott?

A. Yes, but that is the cost shown on that page.

Q. Again I had trouble reconciling the tonnage. You show on your Exhibit EMT-10 that there was a total of 7,064 tons trucked in lieu of lighterage; is that correct, during September?

A. Yes.

Q. On your Exhibit EMT-7, you show that the Baltimore and Ohio had 6,821 of those tons; is that correct?

A. Where do I show that?

[fol. 2176] Q. Your EMT-7.

A. That is correct.

Q. That leaves 243 tons for the CNJ; is that correct, sir?

A. Let's get this straightened out now. EMT-7 deals with the B and O traffic only.

Q. The other is the total for both, is it not?

A. The total for both?

Q. That is right. That leaves 243 for the CNJ; is that right?

A. How do you get the 243?

Q. Subtract the 6821 from the 7064 for both.

A. That is correct.

Q. For that 243 tons, you show on page 26 that the Jersey Central paid $2713.40. According to that they would be paying about $11 a ton for the trucking?

A. That is not so.

Q. I did not think it was. I could not reconcile it; anyway, Mr. Talbott, there is no question unless you want to explain it.

A. We intend to explain it because there is just a difference in figures here. These supplemental statements did not affect these figures. These supplemental costs were taken

from the supporting data. I would like to explain that difference, and I think we can do it very easily.

Q. The increase in cost is shown for the Pennsylvania Railroad in your studies due in large amount to your inclu-
[fol. 2177] sion of the trucking costs; is that correct?

A. No, I would not say that because the traffic either gets trucked or lightered.

Q. I meant from the previous exhibits as you had filed it or the Pennsylvania had filed it, you have added in the trucking costs?

A. No, we have really decreased our costs because, in the original exhibit, we had made a duplication there. We had a charge in there for both lighterage and trucking traffic so we have eliminafed some of that cost and put a credit as appears on my working papers. We took out 88 cents because of that.

Q. I am talking about Pennsylvania.

A. I beg your pardon. I am thinking of the B and O.

Q. In the Pennsylvania, this time you included trucking costs.

A. Their adjustment, as I explained in my testimony—

Q. At page 13, I think you say:

"I have also included the trucking cost portion of the trucking in lieu of lighterage costs for the Pennsylvania which were inadvertently left out of Exhibit 50-A and not included by Witness French."

Could you tell me what you mean by "inadvertently"?

A. I just forgot to put them in, I suppose, just overlooked it.

Q. Did you know that at page 1289 and 1290, the Examiner asked Mr. Heywood why he did not have the trucking
[fol. 2178] costs in, and he explained that it was improper to put them in, that under classification of accounts they had to be subtracted from revenues.

A. I don't know that that is in there. He probably changed his mind, anyway.

Q. He is not here.

A. Well, he changed it.

Mr. Taylor: It appears that the charge is against revenue.

By Mr. Myskowski:

Q. Where do you deduct it from the revenue?

A. We put it in the same place.

Q. I think it is clear that the Examiner asked why it was not included in costs, which you have now done.

A. We put it in cost. The revenue could have been reduced but you get the same answer.

Q. Not if you deduct the trucking costs from the revenue from all your tons. You are adding it to the few tons here that are included in your study. If you subtracted from the revenue on all the tons you would have gotten a lot different situation.

A. Then you would have had to use a smaller divisor for your lighterage traffic. We got either one or the other.

Q. We will get to those later on. I don't understand those, either.

I was trying to point out if you took 75,000 tons of [fol. 2179] revenue and subtracted the trucking costs from them, you get a lower unit cost than if you added the unit cost to 35,000 tons of traffic.

A. That might be true but it should be added to cost irrespective of how it is charged in the Commission's accounts.

Q. Under the Commission's classification of accounts, you agree that it is charged to revenues?

A. Yes, I will agree to that.

Q. In computing your marine costs, as I understand it, what you did was to take the total amount of 56,404 tons, which was the total lightered and divided that into your total marine expenses to get a figure of $3.67 a ton; is that correct?

A. That is correct.

Q. Do you have a figure which would tell me how many of those tons were export and import traffic?

A. I suppose I can, but, of course, they had valued this calculation because we simply arrive at the total tons to get the cost per ton.

Q. Once you arrived at that cost per ton, would it not have been simple to find out how much import-export traffic there was and multiply that by the $3.67?

A. That is what we did.

Q. Let me look at your EMT-9. You show there a total of 31,749 tons which were lightered in the B and O-CNJ pooled operation and on the previous exhibit you show a total of [fol. 2180] 7,152 tons of domestic traffic which I think you agreed had also been lightered. Can I subtract that 7,152 from the 31,749 to find out how many import-export tons were actually lightered?

A. Yes, that would give you the calculation.

Q. In computing your unit cost for the export-import costs, as I understand it you took the total amount shown in your figures for the trucking costs and you divided that by the total import-export tonnage of 34,569; is that correct? That is Schedule 6 Part K, I believe.

A. What was your question?

Q. Did you divide the total shown for trucking in lieu of lighterage of 39,569 by the total tons of import-export traffic 34,569 to get your unit cost of 114; is that right, sir?

A. We arrived at a cost of originally of $37,241 for handling at the steamship piers by contractors.

Q. I am talking about the one above it, trucking in lieu of lighterage.

A. That expense is the sum of the figures in the previous two major columns there.

Q. In order to get that $1.14 which you show in the last column you divided that by your total tons, 34,568; is that correct, sir?

A. Divided by the total tons.

[fol. 2181] Q. And you did the same thing to determine the steam lighter expense right above it?

A. Yes.

Q. Did you do the same thing when you were coming to your marine expenses? Did you multiply your marine expenses of $3.76 per ton by this 34,569 or did you use some other divisor?

A. On the marine expense, we used $3.67 against 27,387 tons in box car traffic which appears on page 2, which included domestic traffic. We also multiplied 6692 tons to arrive at the cost for the other type traffic.

Q. There you took all of the import-export traffic, Mr. Talbott, and multiplied it out by your various expenses

which you had thrown into the kitty and divided by your total tonnage?

A. We multiplied the tons of import-export traffic by the average rate per ton.

Q. What I am trying to get at is this: In arriving at the marine expense per ton, how did you knock that $3.67 figure down to what you show as $2.79 on your schedule?

A. Of the marine operation?

Q. Yes.

A. We knocked that down to recognize the fact that the traffic did not receive both a marine movement and a trucking in lieu of lighterage movement, so we reduced that cost on the marine movement to reflect that condition.

Q. It seemed to me you used the divisor of 41,000 when [fol. 2182] there was only 34,569 tons of import-export traffic moved in any way which was thrown into the kitty. Why did you do that?

A. 41,000 was the total tons of traffic receiving a lighter movement, handled over the platform in the month of September, import and export traffic.

Q. Did that include the trucking?

A. That included everything, trucking and everything, yes, sir.

Q. Why are you throwing trucking tons into this computation? That is what I don't understand. Once you got the figure of $3.67, why didn't you multiply it by the 24,000 tons of import-export traffic that received this movement?

A. We did attempt to do that and I think I did do that on page 2 of my work papers.

Q. Where is that shown, Mr. Talbott?

A. The marine operation is figured at page 12 on that exhibit. Then we carried that over, all the results, to what they call "rewritten page 2."

Q. You there indicate, Mr. Talbott, on page 12, that you use a divisor, 41,721, and multiply the units by 31749 but that that is not import-export.

A. 24,000 was the total traffic receiving the movement.

Q. Which traffic?

A. All traffic receiving the marine movement.

Q. Your Exhibit does not show that; your exhibit shows —EMT-9 shows 31,749.

[fol. 2183] A. That is correct, 31,000 of marine movement through the lighterage pier; 23,000 also received through the movement.

Q. That was the cement.

A. That was the cement.

Q. Of the 31,000, it shows that 7,362 was domestic.

A. That is right.

Q. So there was 24,000 tons of import-export traffic receiving a marine movement over the lighterage pier?

A. That is correct.

Q. Once you determined that that was the amount of tonnage, why didn't you just multiply by $3.76 instead of dividing by 41,000 and multiplying by 32,000 again?

A. We were trying to arrive at the total average cost for handling all of the traffic, all this import-export traffic, and we had to recognize the fact that certain of it received either a marine movement or a truck movement in lieu of lighterage, so we have made this adjustment to account for that fact.

In doing so, we have subtracted 86 cents from our original cost figures to recognize that fact.

Q. But you used a different divisor for your trucking costs than you did for your marine costs. You used 34,000 for the trucking cost and 41,000 for the marine.

A. Not necessarily a divisor. We have attempted to break down this traffic for the month of September by types of cars and we have assigned to each type of car [fol. 2183a] the expenses, the different types of expenses, such as maintenance, which is the same for all classes of traffic, and operations railroads, and various elements of cost, and then we arrive at a cost for each type of car.

As I said before, in my original cost study, I had given all the traffic a lighterage cost and lost sight of the fact that the traffic that was trucked was not lightered, so we have taken that into consideration in these figures.

Q. My question is: Why didn't you use the same divisor for trucking as you used for marine? You presumably wanted to get the unit cost for—

A. I don't think that that is so simple to answer because when we were trying to get our trucking costs per ton, we

naturally divided by the number of tons trucked and we related that to the total tons of import-export traffic.

In getting the marine costs, we had another element. We had the element of domestic traffic which received the movement. So we had to use those funds in the divisor to get a lower cost for that element.

Q. Could you look at your schedule 6, part K, page 23, there? In computing your charge for handling at the steamship piers, you have excluded certain domestic tonnage; is that right?

A. That is correct.

Q. That was 16078 tons at 79 cents.

A. That is right.

[fol. 2184] Q. And 1887 tons at $1.10?

A. That is right.

Q. When you computed the individual cost of handling the tonnage at the steamship piers at page 23 of your original working papers, you show a unit cost of $1.23 per ton. Why did you exclude the domestic tonnage at a lower rate?

A. This is what we actually paid for the domestic tonnage. We picked out those bills. We made a study of those bills.

Q. You show a cost of $1.23 for all tonnage, domestic and foreign, I presume, on page 27, but when it comes to excluding the domestic tonnage, you use a lower figure.

A. All I can say is that the original figure was the amount that we paid for stevedore charges applicable to separate operations in the accounts. In arriving at this figure to be deducted we recapped the bills and card numbers and so on, and arrived at this cost which is the actual cost we paid for the domestic traffic.

Q. Was this traffic which was handled at the steamship piers all traffic which received the marine movement but some which received lighterage or trucking, or what?

A. None of the domestic gets the trucking movement. It all receives the lighter movement.

Q. I think you said that the import-export traffic which received the marine movement amounted to 24,000-some odd tons, is that right, over these piers, 31,000 minus the 7,000? [fol. 2185] Let's keep it rough figures.

A. Yes.

Q. On page 27, you indicate there were a total of 30,254 tons which received handling, and yet you only excluded about 3500-some-odd tons.

A. Where is that?

Q. Page 27 of your original working papers.

A. Of this revised paper?

Q. I don't think it is in your revised paper.

A. What is your question now?

Q. On page 27, you indicated that there was a total of 30,254 tons which received handling at the steamship piers and you excluded around 3500-and-some-odd as being domestic. That still leaves more tons than there was moved over import-export in a marine movement; is that right?

A. That checks pretty closely, doesn't it?

I think you realize there are lap-overs in this marine movement. Our figures are based, as I explained in the record before, on the traffic arriving at the lighterage pier or loaded to depart from the lighterage pier during the month of September. There can be some lap-overs in those figures. Traffic can be lightered in the last day of August and handled over the pier in the first day of September, and the same thing can apply to these September bills.

Q. It looked to me like the traffic which received han- [fol. 2186] dling at the steamship piers was about the same as the traffic which moved via a marine movement and there was over 7,000 tons of that in the total of 31,000. Yet when you came to excluding costs, you only excluded about 3500 tons, and I could not see what happened to the other 3500 tons.

A. I have included the amount that we actually collected in connection with the domestic.

Q. There might be some simple answer to my questions.

Now, Mr. Talbott, would you please turn to your Exhibit EMT-5,—at the time you previously testified, Mr. Talbott, you stated, and I want to quote, in comparing the marine operation at Baltimore with that of New York, you say: "Whereas in New York multi-tows of lighters often four or five at a time is the rule."

If you were correct in saying that multi-tows of lighters are the rule and you often have five at a time, can you tell me how the average comes out to 1.5?

A. Multi-tows are frequent.

Q. You say they are frequent and four or five are often.

A. Perhaps I could modify that statement to say they are about one-third multi-tows and two-thirds single tows, based on the later information we have.

Q. This last column that shows the average lighterage per tow—what is the purpose of that? I don't understand the significance of it.

[fol. 2187] A. The purpose of that is to show, even though the business may fluctuate, the number of lighters per tugboat tow remain constant.

Q. Unless you put in the number of trips back and forth, this figure is meaningless, isn't it?

A. This is a job done by the tugboat at one time. In other words, he either tows one lighter or two or three or four or five up to seven.

Q. But with increases of tonnage, isn't it likely the tug is going to make more trips even though it is convenient for him to handle only one or two lighters? This does not mean fluctuation. It means they evidently find it convenient to carry one or two lighters per tow.

A. I wouldn't say convenient. The job is to be done and if there are seven lighters to be towed and a tugboat can handle seven instead of two, it is a more efficient operation, but we apparently don't appear to perceive any more opportunity to tow a greater number of lighters per tugboat tow by increases in business over this 9-year or 10-year period.

Q. Does this figure mean anything unless you also give us the number of trips?

A. We had to develop that from the number of tows.

Q. Your first column, number of tows,—

A. If a tugboat goes from Point A to Point B with 5, we call it 5; if he goes from A to B with 4, that is 4, and we [fol. 2188] tabulate it that way.

Q. That in no way indicates your costs, does it?

A. It is indicative of the fact that these marine costs are 100 per cent variable.

Q. This just shows that a tug takes on an average 2.5 lighters. It does not show how many trips it makes or anything else.

A. It is an index to cost.

Q. Is it your contention that the costs per ton remain the same and that the absolute costs go up and down with the changes in volume? Is that what you are trying to say here?

A. I am saying this is an important factor in the development of costs and it indicates that even though traffic volume goes up and down, the production measured in terms of lighters handled per tow does not change.

Q. Instead of giving us this figure, couldn't you have given us your actual costs?

A. Do you mean over the ten year period?

Q. To give us some dollars to indicate that there is something to what you are saying.

A. I think there is a lot to what I am saying. You apparently don't get the point.

Q. I don't.

Is it your contention that the marine expense per ton will remain fairly constant and that the absolute dollars [fol. 2189] will go up and down depending on the volume? Isn't that what you mean by one hundred per cent variable?

A. To some degree this indicates from the standpoint of the cost of operating tugboats—

Q. Where do you find that?

A. I say this indicates to anyone who analyzes these figures, in my judgment, that the tugboat expense in connection with towing lighters is related directly to volume. In other words, a tugboat movement handles on an average of one and a half lighters per tow, and with the way traffic fluctuates in all these ten years, that has not changed.

Q. That is true, but how about your costs? Have they changed? Are the costs variable?

A. I have not developed the costs for ten years. This portion of the cost would develop—

Q. To be what?

A. —directly related to—

Q. You say the cost per ton would be the same and would go up or down with volume?

A. With volume.

Q. Would you look at page 32 of your statement? Don't you there show the cost per ton? You are there showing,

am I correct, maintenance expense for tugs, maintenance expense for lighters per ton; is that right?

A. That is right.

[fol. 2190] Q. Does that last column to you look like it is constant? Let's look at it. Your Exhibit 6 shows us the tons lightered. In 1950, you had 64,000 tons lightered, and your cost per ton—I think that should be a dollar. You have ten cents. That figure should be a dollar, should it not, on the table on page 32? You show a composite cost. You say "total costs per ton." The last column on page 32.

Exam. Boat: That is the addition of 3.27 and .3773.

The Witness: Yes.

By Mr. Myskowski:

Q. The next year your tonnage went up and your cost per ton went down, and it seems to indicate that your overall costs remain constant.

A. I think maintenance expenses are hard to judge on a one-year basis. That is the reason I put the ten years experience in here. We don't maintain equipment, you might say, on a uniform basis. I don't think any railroads do.

We put ten years in here to show that based on a 10-year period, the 10-year average costs are pretty close to what I used in the cost study.

Q. I would like to go into that, too, but look at the fluctuations: You say they are variable but every year where your tons go up the costs go down and vice versa. If you want to take wide examples, the only figures you showed here on your work papers, in developing your barge costs you took an average for 1953, 1954, and 1955. That is a [fol. 2191] short term but those are the only figures you put in absolute, and you show that 1953, when you had 806,000 tons, your barge maintenance costs were 337,000. Next year when you had a drop of over 100,000 tons, your barge maintenance costs were 500-some-odd thousand. Next year it remained constant, and your costs dropped down to 347.

How can you say there is any 100 per cent variability? There does not seem to be any connection at all.

A. There is.

I think, as I said before, any cost accountant realizes that maintenance costs have to be taken maybe over a period of three or four years to arrive at a figure that is representative, because no railroads, I don't think, maintain equipment on a uniform basis, and the purpose of this 10-year average was to show the 3-year average cost we used in the study was approximately the 10-year average.

Q. I will ask you a question about that in a minute.

Don't you see the last column there indicates that the cost per ton, based on what you say is the 1956 cost level, varies from a low in 1956 of 60 cents to a high in 1958 of $1.14. If you look at the tonnage you will see your tonnages were much lower in the recent years and higher in the other years.

A. That is reduced to a per ton cost basis.

Q. Let's go into this average too. You show that the [fol. 2192] figure used by you in your study is 88.7 cents; is that right?

A. That is right.

Q. That is the average of what?

A. Average cost for maintaining—

Q. Based on what years? For 1956, your actual costs were, according to this, 60 cents, and yet in your cost study you use a figure of 88.

A. 1956 was not one of the years we used. I think I said in 1956 the low cost is due to the purchasing of some new diesel tugs in 1955 and 1956 and we have not spent much money on them but we assume the maintenance cost is going to be pretty close to this when we maintain it. We are building up a crew of maintenance all the time on these tugboats.

Q. In computing your depreciation and return on investment, did you go back and get your investment for 1953, 1954, and 1955?

A. No.

Q. You get the benefit for the high investment but then you get the benefit for your high maintenance.

A. No.

Q. According to you they fluctuate, you get new equipment—maintenance costs go down.

A. I think maintenance costs should be on a long-term

basis and the longer the better if the figures are variable. I think, what we have done, the cost study is reasonable.

[fol. 2193] Q. At pages 8 and 9, you refer to studies of variability. Are these studies—the one you are talking about—the ones you have set forth in your exhibits?

A. Yes, they are in my exhibits. We just talked about one of them.

Q. I think earlier in your statement you referred to Mr. Harris' testimony in Ex Parte 212. In Mr. Harris' statement, didn't he make it clear that New York Central was unique because they had lines on both sides of the river so you don't have to do all of this car floating that you do on your car traffic?

A. I have read his testimony. If it is in there, it is in there. I don't recall that point.

Q. You seem to latch on to his testimony in proving your point when he made it clear that New York Central is unique in that respect.

A. I thought he said they did a lot of marine movement, the same as all the other railroads.

Mr. Macleay: The record can speak for itself. Is it necessary for the counsel to argue with the witness on that point? It is an interesting enough discussion, of course, but I am just wondering if it is not duplicating it in the record.

Mr. Foley: There is no 212 record here.

Mr. Langdon: Yes, there is, too.

By Mr. Myskowski:

Q. In your Exhibit EMT-4, page 1 of Mr. Harris' testi-[fol. 2194] mony, the second paragraph—

A. Let me find it, now. I am all mixed up.

Q. Mr. Harris states:

"The New York Central is the only railroad with direct rail freight entrance to Manhattan. All of the other railroads must float freight cars across the Hudson River."

A. He also says:

"The lighterage system is preferred by steamship operators because of the ability to load and discharge cargo

simultaneously on the off-shore side of the vessel as well as on the land side."

Q. And he goes on for several more pages.

To get back to these two sentences, he makes it clear that his situation is different than yours, does he not?

A. No, he does not say there is a lot of difference.

Q. He says all of the other railroads must float freight cars across the river, and I think we developed how many of those freight cars you float across.

I think in answer to a question by Mr. Colgren, you indicated in your opinion the domestic traffic was more compensatory than the export-import. Am I correct in that?

A. I don't think that we can use that term "more compensatory." I think I said that due to the fact that the domestic cement barges are loaded with 349 tons on an aver-
[fol. 2195] age and the other traffic figures around—and the import traffic figures around 70 or 80 tons, naturally then I use a divisor including those domestic tons of cement, domestic tons, I arrive at a lower average cost for lighterage traffic than I would obtain if I could separate those costs.

I would get a higher cost for the import-export traffic.

Q. Did you take part in the studies in Ex Parte 212 which indicated that this domestic traffic was very unprofitable?

A. I didn't take a direct part in that study but I have in my exhibit Mr. Perlman's speech where he said it was not compensatory.

Q. That is the domestic traffic he is talking about?

A. All of it, lighterage traffic. He says the freight services is provided by the Central within the City of New York included the only direct service of rail as well as the lighterage service which enhances New York Harbor.

Incidentally, as you know, both of these operate at substantial losses.

Mr. Colgren: May I interpose an objection to reading that? It has not been received yet.

By Mr. Myskowski:

Q. Along those lines, the B and O magazine for June 1958, indicates that the B and O has doubled the number of its piers on Manhattan Island devoted to the exclusive service of car floats. Do you agree with that?

A. That is right, with the exclusive use of car floats, [fol. 2196] which means a car forwarder traffic and some l.c.l. traffic.

Q. That is pretty important traffic.

A. We consider it to be fairly important.

Q. Is this the traffic you are willing to forego?

A. We are willing to forego the lighterage traffic but not the float traffic.

Q. How about these tugs that you allocated to the lighterage traffic which are related?

A. We could reduce our fleet to the extent of that fleet and would not need all those tugs in New York Harbor.

Q. In that magazine, and I want to quote you:

"New York is important to us not only for the handling of domestic freight but for the vast cargoes of import and export materials passing through the world's largest port."

If it is so non-compensatory, why is it so important for you to keep it? That is dated June, 1958.

A. I didn't write that.

Mr. Myskowski: That is all I have, Mr. Examiner. Mr. Colgren would like to ask one more question.

By Mr. Colgren:

Q. Mr. Talbott, you are a member of the Eastern Railroads Cost Committee, are you not, in connection with the pending Trans-Continental Division case?

A. I am.

Q. Did you just concur in a statement circulated to the [fol. 2197] parties to that proceeding in which you took exception to the point made by the Trans-Continental Lines that solely related costs were synonymous with out of pocket costs?

A. My objection runs to my interpretation of how they applied those costs.

I understood that they applied the total Branch cost to the Trans-Continental traffic without taking into consideration the other traffic moving on the Branch.

Mr. Colgren: That is all I have, Mr. Examiner.

Exam. Boat: Is there any redirect?

Mr. Langdon: Yes, there will be. But could we adjourn overnight?

Exam. Boat: We will recess until 9:30 tomorrow morning.

(At 4:40 o'clock p.m., September 16, 1958, hearing adjourned to 9:30 o'clock a.m., September 17, 1958.)

[fol. 2198]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I & S Docket No. 6615

FSA Docket No. 32204

[Title omitted]

Wednesday, September 17, 1958

Met, pursuant to recess at 9:30 a.m.

BEFORE:

MARION L. BOAT, Examiner.

APPEARANCES:

(Same as heretofore noted.)

[fol. 2200]

PROCEEDINGS

Exam. Boat: We will resume now.

E. M. TALBOTT resumed the stand and testified further as follows:

Redirect examination.

By Mr. Langdon:

Q. Mr. Talbott, you referred on page 23 of your statement to the fact that a relatively small part of New York's export-import traffic is loaded directly from car to ship or unloaded directly from ship to car. On what did you base your statement?

A. In the working papers supporting Mr. French's Exhibit No. 113, the following relations appear. New York Central Railroad direct loading, 36,153 tons.

New York Central Waterborne, including trucking, 83,891 tons.

D. L. and W. Waterborne, including trucking, 75,020 tons.

Erie Railroad, waterborne, including trucking, 70,021 tons.

New Haven, waterborne, including trucking, 12,800 tons.

Q. Let me ask you in relation to those three lines you just mentioned how much was loaded directly.

A. 36,000.

Q. No, I mean the three lines you just mentioned.

A. The D. L. and W. and Erie and New Haven, there was no tonnage loaded directly.

Exam. Boat: No, sir. The figures relating to the total [fol. 2201] tonnage to the port.

The Witness: Waterborne, including trucking.

Exam. Boat: Waterborne, including domestic and export and import?

Mr. Langdon: For the month of September.

Mr. Henry: No domestic. The Examiner asked if this was domestic.

The Witness: This is not domestic. Mr. French's Exhibit 113 was only import and export.

Exam. Boat: I see.

The Witness: That is the working papers supporting Mr. French's Exhibit No. 113.

Mr. Welsh: Mr. Examiner, I am a little confused right at that point. I believe that if I understood the witness correctly he said that these figures included coast-wise and intercoastal as well as export and import.

Mr. Langdon: We are taking these figures directly from Mr. French's working sheets, Mr. Welsh, wherein he analyzed at New York for four railroads, the New York Central, the Lackawanna, the Erie and the New Haven, the proportion of export-import traffic that was handled:

A. Directly between car and ship and

B. In water service, including trucking in lieu of lighterage.

Mr. Welsh: Thank you.

[fol. 2202] The Witness: To this we added the PRR, B&O and CNJ. The PRR direct loading, 6,040 tons. Waterborne, including trucking, 110,614 tons.

B&O, CNJ, 35,704 tons. Waterborne, including trucking, 39,252 tons.

This results in totals of direct loading of 77,897 tons. Waterborne, including trucking, 391,608 tons.

Now directly loaded traffic constitutes sixteen percent of the total tons at New York and constitutes the factual basis for my statement. These relationships are based on September 1956.

In other words, 83.4 percent of the traffic is waterborne or trucked in lieu of lighter.

Incidentally, the CNJ direct proportion of loading is higher in September 1956 when the study was made than it is today because of the scrap traffic which is now being handled at another railroad pier.

If the scrap iron is eliminated from the CNJ tons there is indicated that twenty-eight percent of the B&O, CNJ traffic is loaded directly from ship to car.

By Mr. Langdon:

Q. You include your figures now for the B&O, CNJ and Pennsylvania Railroad, Port Newark and the other outlying ports, Earle and Carteret?

A. Yes.

Q. Mr. Talbott, it has been suggested that the export-

[fol. 2203] import traffic to and from differential territory is too small a proportion of New York's traffic as a whole to support an assignment of marine expenses at that point solely related. What is your basis for assigning one hundred percent of the marine expenses to this traffic?

A. Our cost study concerned waterborne export-import traffic. As I just testified, this constitutes the major portion or the preponderance, you might say, of this traffic.

Secondly, it must be realized that this waterborne export-import traffic is handled for the most part in lighterage service as distinguished from the car float service.

In the case of B&O, CNJ, it is true that 46.3 percent of the lighterage freight is domestic, New York traffic, which includes this unique domestic cement movement.

But in the case of the PRR, a portion of the lighter freight which is domestic traffic—it is only fifteen percent; eighty-five percent being export-import traffic.

The only other information on this subject is contained in the testimony of Witness Harris, which I quoted on page 10 of my testimony.

Now, in my judgment, the rendering of lighterage service at New York, which is much more expensive than the car float service and the facilities which are required in rendering this service, including the lighterage piers on the New Jersey side are directly related to the export-import traffic.

[fol. 2204] In other words, import-export traffic would dry up in New York Harbor, so would the lighterage service, unless less expensive ways would be found to handle this domestic traffic now being handled in lighterage service. In other words, the lighters are used because of the demand and requirements of export-import traffic. There is no other reason for this inefficient, costly operation in New York Harbor.

That being so, its costs are properly assignable to the export-import traffic.

Actually, in view of this situation, we might be justified in taking the entire cost of the lighterage service and allocating it to export-import traffic, despite the fact that it is used in some of the domestic traffic. But we have

not gone as far as this in apportioning to import-export traffic only the portion of the lighterage service which is actually used in connection with that traffic.

Q. Mr. Talbott, I think you referred during the course of your testimony yesterday to different costs in abandonment cases and the costs that would be applicable in competitive rate cases. What did you mean by this?

A. I would say there is only one true cost for transportation service on a railroad. The transportation cost determined for one purpose will be identical with the cost determined for any other purpose.

[fol. 2205] In the case of an abandonment in all probability some consideration would have to be given to disposition of plant and equipment. For a competitive rate case the basis we have used is proper because with any other cost basis we would only be cheating ourselves as to the profit from the traffic being costed.

In other words, we might be losing money when we were thinking we were making money.

Q. Mr. Talbott, page 60 of your EMT-3—Mr. Colgren referred to the last sentence on that page. Rather, he emphasized the last sentence on that page, reading as follows:

"On the other hand, the out-of-pocket portion of the expenses on lines of light traffic density or on branch lines will be lower than the figures indicated."

Do you care to comment on that sentence?

A. On branch lines where there is light density the certain elements of expense, particularly those related to plants would be affected by unit costs. This was not so in connection with our lighterage operation in New York Harbor during the year 1956 when our cost study was made.

Insofar as the B&O, CNJ operation was concerned, the marine operation was a limiting factor as to the amount of traffic we could handle at New York. The marine equipment was used to capacity throughout most of the year.

[fol. 2206] Assuming for the sake of argument that there was some surplus or excess plant in the lighterage facilities themselves, the marine equipment was the bottleneck.

Our records indicate that we were compelled to hire lighters during most of the years. The 1956 costs represent capacity operation.

During the year 1956 the B&O and CNJ were compelled to hire throughout the year 1501 charter lighters. These are charter boat days, 1501 during the year. We chartered boats in every month except August.

Q. Do you have anything to add, Mr. Talbott?

A. No.

Mr. Langdon: That is all.

Recross examination.

By Mr. Colgren:

Q. Mr. Talbott, did the figures that you read concerning the export-import tonnage through the Port of New York for the various railroads include any tonnages to Port Newark?

A. Yes.

Q. They did?

Mr. Langdon: So far as our records are concerned.

The Witness: So far as our records are concerned, and I assume the others did.

By Mr. Colgren:

Q. And the Pennsylvania Railroad?

A. Yes.

[fol. 2207] Q. Are those figures a matter of record in this proceeding up until this time?

A. The B&O, CNJ figures are a matter of record. I think the Pennsylvania's are too. Yes, they are a matter of record.

Q. Mr. Talbott, can you direct my attention to where the Pennsylvania Railroad figures for the direct transfer of export-import traffic at Port Newark are to be found?

A. On my EMT-11 we have the figures for the year.

Q. Is that broken down as between direct transfer and lightered freight?

Mr. Langdon: We have the Pennsylvania Railroad witness on this.

Mr. Bongartz: Do you want it on the record, John?

Mr. Colgren: Yes, I certainly want it on the record.

Mr. Bongartz: Mr. Hartzell will give you the figures.

Mr. Colgren: I would very much like to have the figures if we have them if that is agreeable with the Examiner.

Mr. Bongartz: The figure is shown in Mr. Talbott's EMT-11.

The Witness: It is shown for the year you divided by twelve.

Mr. Colgren: Does that indicate the direct tonnage handled in direct transfer?

Mr. Hartzell: It is all between ship and car at Port Newark.

[fol. 2208] Mr. Colgren: This is all then direct transfer?

Mr. Hartzell: That is right.

Mr. Colgren: Thank you.

Recross examination.

By Mr. Myskowski:

Q. Could you find that 6,000 figure? I see in the EMT-11 you give us 10,000, Port Newark. Mr. Hartzell said it is all directly transferred ship to car. What is the part that is directly transferred?

A. This is the figure for the year. You will find 10,000 at Port Newark and you will find 62,118 tons for Bayonne, Earle, New Jersey, and so forth.

We divided that by twelve and arrived at 6,000.

Q. You did not take any actual figures but just divided.

A. We did not have the actual figures.

Mr. Henry: Mr. Talbott, these are the actual figures for the year.

The Witness: These are the actual figures for the year.

By Mr. Myskowski:

Q. You gave us the figures for export-import traffic, 39,152 for the B&O, CNJ, which was lightered and trucked. Could you tell me where that is in your work papers or cost studies? I got it as 39,000.

A. 39,252.

Q. That is what I thought it was.

Mr. Langdon: Are you through, Mr. Colgren.

Mr. Colgren: No, sir. This is along the same line. I only [fol. 2209] had one more question.

By Mr. Myskowski:

Q. Is it true, Mr. Talbott, that your allocation of the import-export costs are based on 4,569 tons, and if you actually had 39,000, then you obviously distributed your costs among too few tons, isn't that true?

A. No.

Mr. Henry: Let us identify the 39 figure first, please.

Mr. Myskowski: Let us wait and see if he can find it.

Mr. Henry: Let us go off the record.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record now.

The Witness: Yes. We arrived at this figure for the B&O based on my exhibit EMT-8. We had no actual figures for the traffic moving through Port Newark, Earle, and Carteret for the month of September. So we divided the 92,070 tons shown on my EMT-8 by twelve and arrived at a figure of 7,673 for the month of September. To this we added the actual scrap and ore tonnage appearing at the bottom of that table.

Mr. Langdon: For the month of September?

The Witness: For the month of September. We arrived at a figure of 35,704 for the direct loading traffic.

Then in view of the fact that we had got a major portion of that data by dividing the year's figure by twelve, we simply divided the 889,748 shown at the top of my statement [fol. 2210] by twelve and arrived at a figure representing total average traffic for the B&O, CNJ.

By Mr. Myskowski:

Q. Then these are not actual figures for September 1956, are they?

A. I think they are the best we could get. We did that

because part of it was that basis. We thought we would try to be uniform.

Q. The figure you show on the EMT-8 is 35,849. Do you mean to tell me that that figure is no good?

A. I told you how I got this figure which I think is good enough for the purpose of arriving at that by percent. It was gotten on a little different basis but it is approximately the same figure.

Q. Is there something wrong with this? 35,849 is the actual tons which you moved by lighter, car float and truck in September; is that not right, Mr. Talbott, on your EMT-8?

A. No, that is the actual tons we moved via the lighter stations plus the traffic which moved via the New York pier stations plus the traffic floated to steamships.

In other words, the 34,569—we have added additional items of traffic to make up the—

Q. That is the actual figure for the month of September?

A. The actual movement through the lighterage piers.

Q. Or if you wanted to throw in the others it would be 35,849.

A. That is right.

[fol. 2211] Q. You didn't want to use any of those figures. You wanted to use the average this time; is that right?

A. We did use the average for the purpose of this calculation.

Mr. Henry: Mr. Talbott, did you have the actual figure for September for total traffic for B&O, CNJ, for September?

The Witness: We had it for—no, we did not have the Port Newark and the Earle and the Carteret.

Mr. Henry: You had it for the year but not for September?

The Witness: We had it for the year but not for September.

Mr. Henry: How about the total traffic for B&O, CNJ?

The Witness: We had it by the year.

Mr. Henry: So the best you could do would be to divide by twelve in order to satisfy what Mr. Myskowski asked for yesterday.

The Witness: That is what we attempted to do.

Mr. Henry: There wasn't any desire about it at all, was there? That was the best you could do.

The Witness: I think in the overall picture it was the best I could do.

By Mr. Myskowski:

Q. Was this in something that I asked for yesterday?

A. We thought you referred to it yesterday.

Q. To what?

A. About the relation of domestic traffic to the traffic [fol. 2212] lighted by the B&O and Central Railroad. You referred to it in cross-examination yesterday.

Q. Now you are really going to confuse me because I thought these figures you were giving had nothing to do with domestic. These figures you gave me I thought were a comparison, were a direct transfer.

A. Pardon me, direct transfer to total export-import traffic. What we were attempting to arrive at was the sixteen percent indicating that the direct transfer traffic was sixteen percent of the total.

Q. For these other railroads are these actual tonnages? Are they the average for the year, or what?

A. They are the tons reported in French's supporting papers, Mr. French's Exhibit 113, and I thought they were the tons for the month.

Mr. Langdon: Of course, Mr. Myskowski, we can take Mr. French's figures for the year and divide them by twelve and we will get a higher relation of waterborne traffic to directly loaded traffic if we do it that way.

Mr. Myskowski: I really have no quarrel with these figures, Mr. Langdon. My problem is this: You do not have the figures for the month of September. Where you have the actual tonnage handled by lighter I do not know why you have to go up and make up an average.

Mr. Langdon: We are trying to arrive at a relationship, [fol. 2213] namely, a relationship on directly loaded traffic and traffic that is not directly loaded. The relative relationship is the sixteen percent. I think we ought to be able to get together as to whether or not that is a proper relationship or not. That is the way we compute it, based

on the way you figured your railroads and we figured it for ours.

Is that a proper relationship or isn't it?

Mr. Myskowski: I do not know.

Mr. Langdon: After all, I supposed the purpose here is to get at the facts and we are interested in developing the proper relationship, and we figure sixteen plus percent.

By Mr. Myskowski:

Q. Mr. Talbott, did you also compute the relationship of the total amount of import-export traffic which was trucked in view of lighterage?

Mr. Langdon: That is computable, I think, from these figures, but we did not do it.

The Witness: It is computable.

By Mr. Myskowski:

Q. Is it less or more than moving by direct transfer?

A. It is computable, but I have not computed it.

Q. How about the tonnage which was floated. Have you made a relationship as to that?

A. This sixteen percent represents the waterborne, including the trucking.

Q. Yes, I know, but there were four methods as you [fol. 2214] very well described in your testimony of moving this freight by lighter, by car float, by trucking in lieu of lighterage, and by direct transfer.

Now I am trying to find out whether you can give me some idea as to the proportion which moves by trucking in lieu of lighterage and the proportion which moves by car float.

A. I can't here. We could develop the figures for you and give them to you.

Q. Can we assume from your exhibits—you show by your two records in your Exhibit EMT-10 that there were 90,261 tons trucked in lieu of lighterage.

Mr. Langdon: We will be glad to compute that, Mr. Myskowski, and file a late filed exhibit on that. We under-

stand that you have got it for your four railroads and we will add it for our two, breaking it down.

In other words, this 84 plus, that part that is handled by lighterage service and that which is trucked in lieu of lighterage and that part which is trucked. I think it is in the record, and we could probably compute it.

Mr. Myskowski: I wonder if it was more or less than the sixteen percent.

Mr. Henry: He has not computed it.

The Witness: I have not computed it. I do not know.

By Mr. Myskowski:

Q. For the B&O am I correct that you had 90,000 tons trucked for the B&O, CNJ?

[fol. 2215] A. Yes, that is correct.

Q. That is certainly less than the amount which you moved by direct transfer, the B&O, CNJ, is that right, sir?

A. Yes.

Q. And as to the amount which was floated, as I recall, there were only seven cars with a total of 189 tons; is that correct?

A. Yes.

Q. Now you have included in averaging up your costs the trucking in lieu of lighterage, the floating and the marine. Would it have been so very much more difficult to compute the costs for the direct transfer operation and include the whole melon?

A. I think I have said about three or four times yesterday that the purpose of my study was to develop costs related to the manner in which the problems of import-export traffic was handled in the New York Harbor, the lighterage movement. That is exactly what I have done.

Q. But you also have included two or three others which are less. Is it because the lighterage costs are fairly much the same as your marine costs?

A. I had no intention in developing a cost on that ship-to-shore method because, as I said before, the major part of the traffic moves via lighter in New York Harbor and, based on my judgment, it will still continue to move, the major part, the general traffic.

[fol. 2216] Q. That is only via your railroad. Now you are adding in all the other railroads. Is it your impression that Mr. Mollman's exhibits showing 50 some-odd tons going CFA, that that exhibit is not correct?

A. I haven't said.

Mr. Langdon: You might expect these other lines to cooperate on those cost exhibits.

Mr. Myskowski: That is something you and Mr. Colgren have thrashed out many times before. I am not in a position to answer that.

Mr. Langdon: I think you are not in a position to ask this witness.

Mr. Myskowski: If you have any objection—

Mr. Langdon: Technically, perhaps, you are right. This is a three-ring circus. Here we are trying to develop in the very best manner that we can the actual cost based on our operations of service at New York.

Mr. Colgren: Except, Mr. Langdon, those services that are moving, by golly, in direct transfer, the cheapest type of service.

Mr. Langdon: Where are your costs on that?

Mr. Colgren: I have sat here, Mr. Langdon, and listened to your preaching about looking for the facts of the service of New York and you have left out of consideration entirely a tremendous portion of the traffic handled by the [fol. 2217] CNJ and B&O. This sanctimonious attitude of yours about the truth of the matter in New York is—

Exam. Boat: Let us not argue now. I think we would like to have that on briefs. We would enjoy reading all of that.

Mr. Langdon: We got some testimony from Mr. Perlman.

By Mr. Myskowski:

Q. Mr. Talbott, yesterday we computed, unless you found something wrong with the figures last night, that the total import-export traffic to and from CFA territory lightered by the B&O, CNJ at New York Harbor comprised some-

thing over three percent of the total tonnage moving through the harbor which received a marine movement.

Mr. Henry: Now listen, Mr. Myskowski, you computed. We did not compute. We do not understand how you tried to do it. We did not agree with your computations. You computed the three percent. Are you a witness now?

By Mr. Myskowski:

Q. Mr. Talbott answered yes to my questions at the time.

Mr. Henry: Mr. Talbott did not answer yes.

Mr. Myskowski: Shall we go through it again?

Mr. Henry: I will find out if we agreed with your three percent now.

Mr. Talbott, did you agree to Mr. Myskowski's computation of three percent yesterday?

The Witness: I did not.

[fol. 2218] By Mr. Myskowski:

Q. Mr. Talbott, can you tell me where that computation was incorrect?

Mr. Henry: Mr. Talbott, do you even recall any parts of that computation?

The Witness: I do not recall it. I gave no thought to it over night, and I don't think I will ever understand it if you explain it, Mr. Myskowski. I do not think it is understandable. I think you could put it in through a witness if you care to and let us see what you are talking about.

By Mr. Myskowski:

Q. Shall we go through your testimony and your work papers and come up with the figure again?

A. I think you will be wasting my time and yours too. You can do it if you want to.

Q. I am perfectly willing to be shown where I am wrong if those computations are wrong.

At page 1540 of the record, Mr. Talbott, you indicated that of the total cars moving through New York Harbor 83.559 percent of the cars were floated; 16.41 percent of the

cars were lightered. Were you wrong when you gave us those figures?

A. No sir; those figures are correct.

Q. 16.41 percent of the cars receiving a marine movement by your railroads in New York Harbor were lightered, is that correct, Mr. Talbott?

A. That is correct.

Mr. Henry: By what railroads?

[fol. 2219] Mr. Myskowski: B&O, CNJ.

By Mr. Myskowski:

Q. Your work papers, Mr. Talbott, in which you developed the marine costs, page nine of your second set of work papers indicates that there were a total of 56,404 tons lightered. Is that correct, Mr. Talbott?

A. That is correct.

Q. That sheet indicates that there were 23,705 tons of cement which was domestic cement. Is that correct, Mr. Talbott?

A. That is right.

Q. Your exhibit EMT-8 indicates that in addition there were some 7,152 tons of domestic traffic which received a lighterage movement in addition to this 23,705 tons. Is that correct, Mr. Talbott?

A. How many tons is that?

Q. Which figure?

A. The last figure you quoted.

Q. Your Exhibit 8, EMT-8, says 7,152.

A. Yes.

Q. Now if I add 7,152 to 23,705 I get something over 30,000. Is that correct, Mr. Talbott?

A. Yes.

Q. If I subtract 30,000 from 56,000 I have only 26,000 left, which indicates that of the 56,000 receiving a lighterage movement, more than half were domestic. Is there something wrong with my computation?

[fol. 2220] A. No; that is correct.

Q. If I take even the full half of the sixteen percent then there were a total of only eight percent of all import-

export traffic moving through the Port of New York by your railroad which received a lighterage movement.

Mr. Macleay: Eight percent of what?

The Witness: Eight percent of what?

Mr. Myskowski: Half of sixteen is eight.

Mr. Macleay: Did you say eight percent of export-import traffic? That is what I believe you said.

Mr. Myskowski: If I said it wrong, I am grateful to you.

By Mr. Myskowski:

Q. Of the total tons receiving a marine movement by your two railroads through New York Harbor only eight percent at best was export-import traffic receiving a lighterage movement. Is that correct?

A. I don't know.

Mr. Macleay: You are talking about a lighterage movement or a car float movement? Will you straighten me out, sir?

Mr. Myskowski: I will be glad to, Mr. Macleay.

Mr. Talbott testified that of the total cars receiving a marine movement—

Mr. Macleay: You are including all the car float business, the domestic car float business?

Mr. Myskowski: Originally. I am trying to break it [fol. 2221] down for you. Originally that is correct. Sixteen percent of all cars receiving one type of marine movement or another were lightered. Of the total lightered, more than half were domestic.

If I divide the sixteen in half or by two, I get eight percent of the total receiving a marine movement were import-export cars that were lightered. Is there something wrong with that computation?

Mr. Macleay: I just wanted to understand that you are combining the car float business with the lighterage business.

The Witness: One of your fallacies up to this point is that your lighterage data in your exhibt is all based on tons, whereas, the float traffic is based on cars, and car float traffic has an extremely lighter loading.

By Mr. Myskowski:

Q. Is there anything in that record that would justify the statement.

A. Nothing. When you compare rabbits with elephants, why, of course, you are getting an erroneous figure. You just cannot compare these figures and arrive at any sensible conclusion.

Q. All right. Let us see how that operates. Mr. Talbott, originally we were using cars, is that right?

Mr. Henry: Were?

The Witness: We did not use cars.

By Mr. Myskowski:

Q. In the original breakdown between cars floated and [fol. 2222] cars lightered, you used cars, isn't that right?

A. Well, the cars were in the record and we had to use the floated cars in order to determine the cost of that portion of the traffic which was floated, handled to Manhattan on a car float. But, if I remember correctly—of course, we had to use the cars in connection with the yard expenses—but we haven't used the cars floated anywhere in connection with the cost of handling the lighterage traffic because the lighterage traffic is based on tons in all our cost calculations.

Q. Let us assume, Mr. Talbott, if we take that breakdown, 1596 cars having been lightered in September and 20,176 having been lightered for the year, for September your proportion incidentally was less than sixteen percent. Your proportion here is shown as 15.45 percent. Are you saying that there were more or less cars proportionately of domestic than import-export in that 15.96 or what? You have the tonnage. That is why I used the tonnage. You have the tonnage in your work papers.

A. I will say you are bunching statistics which arrive at percents which, in my judgment, are meaningless.

Q. They are the only ones we have in order to get at these figures.

A. We do not think you need to develop costs in this traffic, so we didn't put them in the record.

[fol. 2223] Q. As you know, Mr. Talbott, this three percent figure is used only to show that when you start telling us that these costs are predominantly to be allocated to this three percent that we do not think that is a very logical statement.

A. Why the cost of the lighterage service almost in its entirety is due to import-export traffic, the major portion of it. Of course, your tug expense, a large part of that, I haven't said the floating expense.

The cost of handling floats is chargeable to the import-export traffic only to a very minor extent.

Q. Am I correct in my assumption that you have taken the tug expenses and allocated some to lighterage traffic and you have taken some under the theory that this is solely related to the lighterage? Is that what you have done?

A. In setting up the expense we have allocated a portion of the tug costs to lighterage service.

Q. And that portion you have included in its entirety, one hundred percent?

Mr. Henry: It is one hundred percent of thirty-six percent.

The Witness: One hundred percent of thirty-six percent.

By Mr. Myskowski:

Q. And you have included one hundred percent because you say that this tug expense is solely related to this import-export traffic involved or covered by the rates here under investigation; is that right?

[fol. 2224] A. That is correct.

Q. And the way we have computed the traffic comes out to three percent. Let us be generous and say four percent.

A. It doesn't mean anything what it comes out to because the apportionment of tub time to lighters and floats was on a time study basis. What the mathematical computations there are just do not mean anything to me.

Q. You made some statements, Mr. Talbott. You said if this import-export traffic dried up you would do away with your lighterage operation entirely. Do you seriously mean that?

A. We feel that we would be justified in doing away with

the lighterage operation. The only thing we could justify in the New York Harbor was for the domestic traffic.

Q. You can have these tugs hauling these car floats back and forth?

A. That is something else. We would decrease our number of tugs based on the requirements of the floats, and you would have a different picture entirely. You know your float operation is almost uniform. You can almost schedule a major part of your float operation where you can't your lighter operation.

Q. Would you really seriously consider foregoing your cement traffic?

A. That is a unique movement in New York Harbor, and even that could be handled probably on a basis which would [fol. 2225] result in a very minimum cost, but there might be some other way to handle that by rail. There is no question in my mind but one thing, if we didn't have this lighterage service in New York Harbor today we would have no domestic traffic handled by the lighters, in my judgment. They would have found some other way in the meantime to handle this traffic.

Q. How about hauling big machines and equipment of that kind which you have to handle? You can't get those on a truck.

A. On floats.

Q. Car floats? You can't get them on a car float, Mr. Talbott.

A. These heavy machines at the present time—you have the Spencer steam operation which handles heavy materials, not air equipment.

Q. You said in 1956, Mr. Talbott, you chartered, if I had the figures right, something like 1501 pieces of equipment. What were they?

A. Lighters.

Q. Chartered lighters. Now if you actually lost this CFA export-import traffic which is something like three or four percent, isn't it likely that you would just stop chartering and continue just the same way you are? What would you change?

Mr. Henry: Do you understand that question, Mr. Talbott?

The Witness: I do not. I am just trying to figure out what he means.

[fol. 2226] By Mr. Myskowski:

Q. You mean you are not going to do away with tugs when you need them for your car floats; you need them for your domestic cement. You say you don't have enough lighters now.

Mr. Langdon: He never said that. We are confining our point to the lighterage service, what the lighterage service means, the actual use of lighters.

By Mr. Myskowski:

Q. In view of Mr. Langdon's statement, would you abandon the use of lighters for cement?

A. I do not know what the policy would be but I am reasonably certain we would try to minimize all future lightering in the New York Harbor. They might even do that. They might even find some way to handle that by rail.

Q. Your cement tonnage runs pretty high, does it not, Mr. Talbott?

A. Yes, sir.

Q. 23,000 tons a month, 266,000 tons for the year.

A. But you must admit that any traffic handled by lighter is an expensive transportation method, inefficient in transportation, inefficient and expensive.

Q. You think if you lost this CFA traffic you might forego the 266,000 tons?

Mr. Henry: We are not talking about CFA traffic. It is all import-export traffic in New York.

Mr. Myskowski: Now we are getting to the point. I [fol. 2227] thought you used all import-export because you didn't have a breakdown on CFA traffic.

Mr. Henry: You cannot cost CFA separately from the cost of other traffic.

Mr. Myskowski: That is what I just said, that Mr. Talbott in his basic computations used all import-export traffic because you couldn't cost out CFA traffic.

By Mr. Myskowski:

Q. Is that right?

A. In order to arrive at the unit cost which receive the same type over the same facilities, we had to use all the traffic.

Q. But we are here concerned when the rates to and from CFA are compensatory. You are not in your exhibits using any other outside of CFA territory, are you?

A. My cost study, as I said before, covered all traffic.

Q. Your exhibits 1 and 2 in which you make your comparison are CFA points.

Mr. Henry: Certainly. That is a rate question.

Mr. Myskowski: We have a rate question here. Whether those rates are compensatory.

Mr. Henry: They are all rates of import-export in New York. I am sorry. I apologize. You are right.

Mr. Myskowski: All right.

Mr. Colgren has one more question, Mr. Examiner.

[fol. 2228] Further Cross-Examination

By Mr. Colgren:

Q. Mr. Talbott, as a result of our discussions this morning, is it the position of the B&O, CNJ and PRR, that they are recommending the abandonment of export-import traffic through New York?

A. I wouldn't think so, not mine.

Q. Would that be your recommendation to your management on the basis of your cost study?

Mr. Langdon: The position of our company is that the export-import traffic in New York be put on a compensatory basis.

Mr. Colgren: In that connection, Mr. Langdon, is the B&O contemplating giving up the six cent additional charge recently authorized by the Commission for waterborne traffic?

Mr. Langdon: That is under contemplation, but not at New York, only the ports that we serve directly.

Mr. Colgren: Does the B&O serve the port directly?

Mr. Langdon: We have to divide that, you know, with

Mr. Colgren: I do not believe I understand that answer. Mr. Langdon, did you mean to say that the B&O does not serve the Port of New York directly?

Mr. Langdon: We publish rates, as I understand it, in connection with the Reading, New Jersey Central to New York. We do have terminal facilities, of course, in New York.

[fol. 2229] Mr Colgren: So the B&O does serve New York directly?

Mr. Langdon: We do not control the rates in New York, I will put it that way.

By Mr. Colgren:

Q. Mr. Talbott, what is your title with the B&O Railroad?

A. Assistant Comptroller.

Q. Are you called upon to make recommendations to management as a result of studies?

A. I wouldn't say it exactly that way. Of course, I make studies and in conferences recommendations come out lots of times. I do not think I am called upon to make a recommendation regarding a rate or traffic.

Q. Mr. Talbott, on the basis of the cost study that you prepared for this proceeding would you recommend the expansion or an increase of solicitation of foreign traffic through the Port of New York?

A. If we probably get this six cent additional charge in New York we would be on firm ground in New York.

Mr. Colgren: That is all I have, Mr. Examiner.

Exam. Boat: That seems to conclude it.

Mr. Moerman: It is my understanding, Mr. Examiner, that in this proceeding the Baltimore and Ohio Railroad has proposed countering reductions to those of the New York Central, Erie and other lines. I assume that is correct, is it not? I will address my question to Mr. Langdon.

[fol. 2230] Mr. Langdon: There are under suspension in this proceeding tariffs which preserve the present differential under the tariffs proposed by what we call major respondents.

Mr. Moerman: Is the Reading a respondent here? And if not, how is it, Mr. Langdon, that in view of your state-

ment that you do not control the rates to New York you are here nevertheless proposing a reduction to meet the reductions you say of the lines like the New York Central and the Erie?

Mr. Langdon: I do not get the purport of your question. I am sorry. I did not understand your question.

Mr. Moerman: You serve New York you say in connection with the Central Railroad of New Jersey, is that correct?

Mr. Langdon: And the Reading.

Mr. Moerman: And the Reading. You say you do not control the rates to New York, neither the Central Railroad of New Jersey nor the Reading here, and yet you have tariffs before this Commission proposing reduced rates. I ask you how is it that while in one breath you state that you do not control the rates to New York and in the next breath you concede that you have reduced rates here?

Mr. Langdon: In the first place, I am not sure that in our tariffs which were filed preserving the differential at the time the reductions were first proposed by the New York Central and associated lines that we included New York, but if we did, the Reading is the respondent in this [fol. 2231] case. They reach New York Harbor themselves.

Mr. Moerman: I would like to know for the sake of the record whether or not the Baltimore and Ohio Railroad and the Baltimore railroads generally have in issue here reduced rates from the Port of New York.

Exam. Boat: To and from the Port.

Mr. Moerman: Sir?

Exam. Boat: To and from the Port.

Mr. Moerman: Yes, to and from the Port.

Mr. Langdon: I understand that we did file for New York at that time; the Jersey Central and Reading concurred. Of course, the Pennsylvania is also involved in this picture, you understand.

Mr. Moerman: Mr. Laux informed me that the CNJ did not concur.

Mr. Mollman: They are not a part of this proceeding.

Mr. Moerman: We will look in the tariffs.

Mr. Mollman: They speak for themselves.

Exam. Boat: That seems to conclude the examination of Mr. Talbott. You are excused. Thank you very much.

(Witness excused.)

OFFERS IN EVIDENCE

Exam. Boat: Do you offer the exhibit?

Mr. Langdon: Yes.

Exam. Boat: Very well. Exhibit No. 125 is received.

Mr. Colgren: Mr. Examiner, I have an objection to one [fol. 2232] of the attachments to Exhibit 125. Mr. Examiner, I refer to the attachment described as Exhibit EMT-12 of the Witness Talbott attached to Exhibit 125 which is, as indicated in his testimony, a press release which he indicates was circulated among the railroads.

Mr. Examiner, this strictly is impertinent to the inquiry at hand. It has no relationship whatever to the rates under suspension in this proceeding nor for that matter does it even refer to export-import traffic. It makes broad general statements concerning the total operations in the New York area, both land and water.

As you know, New York Central serves Manhattan Island directly through its west side operations, too. It also serves New York through the West Shore branch through Weehawken.

As the Examiner probably knows there has been much discussion these past several years concerning taxation as respects the New York Central, not only in the City of New York but throughout the whole state of New York.

This press release encompasses all of those propositions. I fail to see its pertinency to this examination into the propriety of certain export and import rates from and to Central Freight Association territory.

I, therefore, respectfully request that the Exhibit EMT-12 not be accepted in testimony.

[fol. 2233] Mr. Langdon: We will be glad, of course, Mr. Examiner, to limit this exhibit to the part that is so obviously relevant that further discussion seems unnecessary, namely, this part:

"The freight services provided by the Central to industry within the City of New York include the only direct service by rail as well as a lighterage service which enhances New York Harbor."

I am reading this from page 2, incidentally.

"Incidentally, as you know, both of these operate at substantial losses."

In other words, the direct service by the rail and the lighterage service.

"In 1957 the loss on our freight service to Manhattan Island was $10,350,000."

Obviously, the cost in this case of service at New York in connection with this export-import traffic is of paramount importance. We have tried throughout this proceeding to determine whether or not the New York Central has made any studies of this service in the past and have suggested that we would be glad to join with them in a proceeding before the Commission or otherwise in developing that cost.

They have given us to believe that no such cost studies have been made.

During the course of this proceeding their president [fol. 2234] announces publicly that this freight service at New York involves a loss of over $10 million a year, including the lighterage service. Now that testimony has to be connected up with Mr. Harris' testimony which is also in this record included as an appendix to Witness Talbott's statement, which indicates that of the freight service at New York the import-export traffic and the service rendered in connection with the export-import traffic is the more expensive.

That of this $10,350,000 loss at New York referred to for the freight service by Mr. Perlman and Mr. Harris—they said that the most expensive part of it is this very service that we are talking about here. Obviously, the statement is relevant as an admission against interest.

I take it that the authenticity of this is not questioned so only relevancy is involved.

Mr. Colgren: Mr. Examiner, referring now to the excerpt which Mr. Langdon is now willing to confine the proposed Exhibit 12 to, it very clearly states that:

"The freight service is provided by the Central to industry within the City of New York."

In other words, he is referring to not export-import traffic, which is the subject of this discussion, but he is talking about services to industry within the City of New York.

Mr. Macleay: He also says, "as well as a lighterage [fol. 2235] service which enhances New York Harbor."

Mr. Colgren: Mr. Macleay, I am sure you understand many industries are served by lighter in domestic operations.

Mr. Macleay: Mr. Harris testified somewhat to the contrary and his testimony has been received in this record.

Mr. Colgren: If I may continue my objection or answer Mr. Langdon, the Examiner is probably familiar with the fact that New York Central recently sought to increase its charges in connection with the delivery by lighter of domestic lumber within the New York Harbor area.

These questions of total revenues as against total costs in the New York Harbor area it seems to me are apart and foreign to the investigation herein where we are dealing with the basic question of whether or not the New York Harbor lines should be permitted to compete for a certain restricted traffic; namely, that in the Central Freight Association territory and destined to foreign destinations through the various North Atlantic ports.

It stands to reason, Mr. Examiner, that there are countless areas on all of the railroads that can be deemed to affect their total revenues and so on. We recognize that situation exists in the City of New York. Nevertheless, we do not feel that this proposed exhibit adds one iota to the probative material which should be before the Commission in determining the basic issue which I have just recited.

[fol. 2236] Exam. Boat: Mr. Langdon concedes that much of it is perhaps not relevant and I think only the paragraph which he directed particular attention to at most should

be received in evidence. So the statement will be stricken except for the first full paragraph on page 2.

Exhibit 125 is received.

(Exhibit 125 was received in evidence.)

Mr. Colgren: Mr. Examiner, I was notified some time ago that I should make an urgent telephone call. I wonder if we could have a short recess before we continue the proceeding.

Exam. Boat: We will recess for ten minutes.

(Brief Recess.)

[fol. 2237] Exam. Boat: Let's come to order now, please, gentlemen.

Mr. Bongartz: Mr. Examiner, from time to time in these hearings reference has been made as to correspondence between the railroads on the opposing side, with particular reference to correspondence between Mr. Colgren and myself in connection with this case, in which certain information was requested and certain information was furnished. Reference has been made to those things, but the things themselves are not in the record.

We have had reproduced copies of this correspondence and statements to which the correspondence refers, and it would seem appropriate at this time to have this marked for identification and received in evidence. I don't know what your pleasure is on this. I can identify briefly what each of these things is.

Exam. Boat: Perhaps we better assign different exhibit numbers to them.

Mr. Bongartz: It might be more appropriate, I think, if you had one exhibit number for all. It would make it cumbersome unless you had an exhibit number with, maybe, letters.

Exam. Boat: I think we better identify those as separate exhibits.

Mr. Bongartz: In that case maybe we better pass out what copies we have so we can mark them. We would like one to each principal interest. The reporter has copies of these.

These letters all show copies to you. Now, if you desire [fol. 2238] another set, I have a set here.

Exam. Boat: I don't think I will require them.

Mr. Bongartz: We have plenty of copies of the letters, but there are some statements here which we do not have sufficient copies for everybody in this room.

Off the record.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record now.

Mr. Bongartz: First is a letter dated February 20, 1958 from Mr. Colgren addressed to Mr. J. L. Heywood.

Exam. Boat: That may be identified as Exhibit No. 126.

(Exhibit No. 126 was marked for identification.)

Mr. Bongartz: Letter dated February 26, from myself to Mr. Colgren.

Exam. Boat: The letter will be identified as Exhibit 127.

(Exhibit No. 127 was marked for identification.)

Mr. Bongartz: Letter dated February 28, 1958, from myself to Mr. Colgren.

Exam. Boat: It may be identified as Exhibit No. 128.

(Exhibit No. 128 was marked for identification.)

Mr. Bongartz: Letter dated March 19, 1958, from Mr. [fol. 2239] Heywood to Mr. French.

Exam. Boat: It may be identified as Exhibit 129.

(Exhibit No. 129 was marked for identification.)

Mr. Bongartz: Letter dated April 7, 1958, from myself to Mr. Colgren.

Exam. Boat: It may be identified as Exhibit 130.

(Exhibit No. 130 was marked for identification.)

Mr. Bongartz: Now, that letter, Exhibit 130 for identification, makes reference to some sample cards and two sample sheets. Can those cards and sheets be considered as a part of that exhibit?

Exam. Boat: I didn't receive copies of those? I am just inquiring whether I received copies. I guess I did receive copies. These are the cards and sheets to which you refer?

Mr. Bongartz: Yes, they are referred to in this letter of April 7th.

Exam. Boat: They can be considered as a part of that exhibit, yes.

Mr. Bongartz: Of Exhibit 130.

Exam. Boat: Is that the one headed 31-C, is that right?

Mr. Bongartz: Yes, and 35-C, and then there is a longer two-page sheet, which has a mark "E-1J" in the upper right hand corner.

[fol. 2240] Exam. Boat: Right.

Mr. Bongartz: And to that is attached a statement marked "D-3" in the upper right hand corner.

Exam. Boat: Yes, D-3. I have all those. That will be Exhibit 130. We have identified that.

Mr. Bongartz: Next is a letter dated April 22, 1958, from Mr. Colgren to Mr. Langdon and myself.

Exam. Boat: April 22nd, you said?

Mr. Bongartz: That is right.

Exam. Boat: That may be marked Exhibit No. 131 for identification.

(Exhibit No. 131 was marked for identification.)

Mr. Bongartz: Next is a letter dated April 28, 1958, from myself to Mr. Colgren. In connection with that letter two statements were attached relating to Items 3 and 4 in the letter. Item 4 has already been received in evidence as Exhibit 119. I have a statement which was referred to in paragraph 3 of the letter. Unfortunately, we do not have reproductions of that at the moment, and if it is agreeable I would like to have that reproduced and filed later as a late filed exhibit.

Exam. Boat: As a part of Exhibit 132.

Mr. Bongartz: This hasn't been marked yet, but I would assume it would be marked as Exhibit 132.

[fol. 2241] Exam. Boat: You are right, 132.

(Exhibit No. 132 was marked for identification.)

Mr. Bongartz: And the statement to which I just referred, which is a statement headed "Pennsylvania Railroad Maintenance Expenses—Harsimus Cove Float Bridges

Separated as to Contract and Railroad Expenses, Years 1954, 1955 and 1956."

Exam. Boat: That statement, when filed, will complete Exhibit 132.

Mr. Bongartz: When it is filed it will complete 132, yes.

Next is a letter dated May 1, 1958, from myself to Mr. Colgren, transmitting copies of Budget Bureau reports, and to this letter are attached copies of such reports.

Exam. Boat: Those are headed "Vessel Operation Report"?

Mr. Bongartz: Yes, sir. One report is for the year 1956, and the other is for September 1956.

Exam. Boat: I have those. That will be identified as Exhibit 133.

(Exhibit No. 133 was marked for identification.)

Mr. Bongartz: I offer these exhibits in evidence.

Exam. Boat: There being no objection, Exhibits 126 to 133, inclusive, are received in evidence.

(Exhibits 126 to 133, inclusive, were received in evidence.)

[fol. 2242] Mr. Langdon: Mr. Examiner, in connection with Exhibit 131, I should like to offer now a memorandum which contains the B&O's response to the questions so far as they pertain to the B&O-Jersey Central, as requested in Mr. Colgren's letter of April 22nd. Copies are now being distributed. Unfortunately we don't have the letter of transmittal; but it was the nearest letter of transmittal dated May 1st from me to Mr. Colgren, and I do have copies of the substantive part, namely, the answers that Mr. Talbott provided. That I think should be given the next number.

Exam. Boat: That will be identified as Exhibit 134.

(Exhibit No. 134 was marked for identification.)

Mr. Colgren: Mr. Examiner, before you rule on the acceptance of this into the record, may I ask that it be deferred until a little later until I have a chance to look through it.

Exam. Boat: Very well.

Mr. Bongartz: Mr. Examiner, in connection with Exhibit 132, I can offer this copy to the reporter for the official file.

Exam. Boat: I see.

Mr. Bongartz: Mr. Hartzell has the pencilled sheet from which this was photographed, and it might be better to get this right in the official file now.

Exam. Boat: It will make the record copy complete now. This is to be attached to Exhibit 132.

[fol. 2243-44] Mr. Langdon, I notice this exhibit which we identified as Exhibit 134 makes reference to a map appended, or is that merely a quotation which I am looking at on sheet 2?

Mr. Langdon: I think that is the map. That is a very large map, of which we had only one copy, one of which you have. Mr. Colgren has one.

Exam. Boat: Perhaps I should make my copy available for the record if there are a limited number. I think I recall that.

Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Colgren: I would like to call Mr. Harris to the stand, please.

WALTER H. HARRIS was sworn and testified as follows:

Direct examination.

By Mr. Colgren:

Q. Mr. Harris, will you please state your name and position for the record?

A. Walter H. Harris, Lighterage Superintendent of the New York Central Railroad at Weehawken, New Jersey.

Q. Will you please explain your duties and responsibilities in that capacity?

A. I have responsibility for the marine operations of the New York Central in New York Harbor, including their [fol. 2245] ferries, tugs, lighters, floats, and also the pier

stations where freight is transferred from car to boat and boat to car.

Q. How long have you held your present position, Mr. Harris?

A. This is the fifth year.

Q. What was your prior experience?

A. Prior to that I was Assistant Superintendent on the land side between Weehawken and Albany for four or five years, and prior to that I was Train Master in various divisions, and I have been on the railroad for twenty years.

Q. Mr. Harris, have the marine facilities of the New York Central Railroad changed during the period of your employment as Lighterage Superintendent?

A. Not to any appreciable extent. Just before I took over this job, we lost one pier through fire, but we erected in lieu thereof the banana pier, so-called, where bananas are loaded direct from ship to car.

Q. Incidentally, that banana pier facility in effect serves all the railroads in the New York Harbor area, is that right?

A. That is so.

Mr. Langdon: Would you mind clarifying that, Mr. Colgren?

By Mr. Colgren:

Q. Perhaps, could you give some history of the financing of that pier, Mr. Harris?

A. Well, the pier is financed by the New York Central Railroad and leased by the United Fruit Company, and as I understand one of the conditions under which the lease was [fol. 2246] made was that we would provide equal service to all of the railroads in New York Harbor, as well as our own, and as such we have very rigid schedules of delivery to connections of bananas loaded at this pier, so that the other railroad is able to compete as well as we are for that traffic, as I understand.

Mr. Colgren: Is that satisfactory, Mr. Langdon?

Mr. Langdon: There will be a few questions, but that is all right.

By Mr. Colgren:

Q. Has the New York terminal area served by New York Central by lighters and car floats changed in your experience?

A. Not to any extent. The major change, as I see it, has been the development and expansion of Port Newark.

Q. Is the terminal area in the New York Harbor the same for all railroads serving that destination?

A. Yes.

Q. In your experience as Lighterage Superintendent have there been fluctuations in traffic on the New York Central?

A. Oh, yes.

Q. Do the service requirements in the New York Harbor change with fluctuations in traffic?

A. Well, if you mean that we have less places to serve, no. The same piers and customers have to be served whether in a low period or high period of business.

Q. Now, in your capacity as Lighterage Superintendent [fol. 2247] what actions are possible, or rather, what courses of action are available to you in periods of declining traffic?

A. Well, naturally like in any operation, you attempt to retrench just as much as you can in the reduction of tug power and barge power, barge equipment, and manpower.

Q By retrenchment of tug power, do you mean the sale of tugs?

A. Oh, no. No, no.

Q. Would you explain that, please?

A. Well, all our tugs, all our lighters are manned either by a tugboat crew or by a barge captain, lighter captain, and the money we save when we lay up tugboats or barges is in the personnel that we lay off on furlough.

Q. In your opinion is your ability to store or otherwise make inactive your equipment commensurate with decreases in traffic?

A. No. The best I can describe it, a good part of it is in the terms of railroadmen like the local freight train that serves in the district between two given points. It is likewise true with your marine service. You serve these piers in New York, and it may happen that you go to the farther

most points with little traffic, just as well as you would go to those points with heavy traffic. That is the trouble with periods of low business in New York. You have no tonnage to compensate you for the service that you render.

Q. You mean you must continue service requirements regardless of tonnage, is that a fair restatement?

[fol. 2248] A. Yes. If you are going to serve the customer, you have got to have enough power and equipment to do it.

Q. Now, Mr. Harris, can you give us any idea of your ability to control your expenses in a period of declining traffic?

A. Well, how to control our expenses in periods of declining traffic, I have answered that to some extent, that we try to cut back our manpower as far as we can and still provide the service, but we have equipment, fixed facilities, such as wharves, docks, float bridges and so forth that have to be maintained as well as the marine equipment sooner or later. It is all subject to wear and tear whether used or not. It is in the water and subject to the weather, to the tides and winds that occur, and the bumping against docks and so forth, so you have an expense whether you tie them up or not.

Q. Mr. Harris, what is your experience when you have an increase in volume of tonnage with respect to utilization of equipment?

A. I have explained in the last few questions what we do in declining business and also said that we can't make any reductions and still provide service to the extent that business drops. So therefore it follows and our experience shows that we pick up and can take care of a lot of business before we have got to increase our power or crews. What I mean by that is sometimes we refer to this service in New York as the milk route, and if a customer takes three bottles you make one trip. If he takes one, you make the same trip. Well, that is why in periods of declining business you can't [fol. 2249] cut down the service commensurate and why you don't increase it commensurate with the increase. If I have described it, I don't know.

Q. In other words, you have a certain amount of slack that is permissible to take up?

A. Yes.

Q. Mr. Harris, was there much difference between the fixed facilities that now operate for the New York Central operated by the New York Central presently as were operated during World War 2?

A. Practically the same thing, except as I explained, the loss of Pier 3 by fire in 1948.

Q. Now, Mr. Harris, the New York Central, or rather, does the New York Central handle some of its domestic traffic in marine movement?

A. Yes.

Q. Would you indicate what type of traffic that is?

A. Well, the major amount of domestic traffic we handle in New York by lighter in tonnage is cement from the Hudson Valley, from Hudson, New York, and Allison, New York. It goes to local receivers along the harbor area, up in the creeks, and on the East River and North River and the Coney Island District.

Q. How is that bulk cement handled?

A. Well, we have two ways of handling bulk cement. One is by a plant at 60th Street in New York, where it is blown [fol. 2250] by air into a barge, and then pumped out by electric pumps provided on the barge. But the greater amount of bulk cement handled on the New York Central is handled in so-called air activated containers. Those are containers that handle about eleven tons of cement apiece and from five to six containers on a gondola, and from five to six cars are loaded on a scow and delivered to the customer's dock, where he applies air and blows it out.

Q. In the transfer of these air activated containers, is that from the car to the lighter?

A. Yes. They are lifted by cranes from the car directly onto the deck of the scow.

Q. What would be the tonnage, the average tonnage, if you can give me that figure, of a lighter of cement for local delivery?

A. Well, the capacity is about 350 tons, and we load, as I say, six cars. We get pretty close to the capacity.

Q. Is that true of the bulk cement?

A. Oh, yes. The bulk cement is also loaded to capacity; that is, 350 tons.

Q. Now, that thansfer—well, I guess it is inherent on the

record, but the transfer from gondola cars is direct to the covered barges in that bulk movement you described, is that right?

A. That is right.

Q. Does the New York Central handle other bulk commodities in its marine service?

[fol. 2251] A. Well, we have a two million bushel elevator where grain is delivered direct to a vessel that is kept and has been dredged since 1956 to ocean deapths or depths sufficient for ocean-going ships. Then we have two other piers that we keep dredged for the receipt of ore and sulphur, and then, of course, the banana traffic.

Q. Do you have any idea, Mr. Harris, of the average tonnage that might be developed during a period of heavy traffic volume as against a light traffic volume period? What I have in mind is, well, I am thinking of World War 2, for instance. Have you any familiarity with that?

A. Oh, yes. In other words, with the kind of a job I have it is one requiring familiarity with costs and production and naturally tonnage.

Mr. Macleay: I wonder if the witness could speak up.

The Witness: All right. I am very sorry. I say we are handling about a million tons a year now in lighterage service. Looking back in the records in my office, why, the war years it was two and a half million. So it was about two and a half times as great as it is now.

By Mr. Colgren:

Q. There has been no change in the shore facilities of any major extent. You did mention Pier 3 being burned.

A. Yes.

Q. But aside from that is there any major change in the [fol. 2252] shore facilities during World War 2 as compared to today?

A. No. We have gone from a three trick operation to two, and in other places one, but not in fixed facilities.

Q. Mr. Harris, do you have any idea as to the utilization of equipment in a heavy volume period? Again, I have in mind World War 2 as against our present period of traffic volume.

A. Of course, in my office all of these records are available, and I have occasion and the duty of comparing, and presently our, take our tonnage per barge, it is running about sixty tons. It did this year. In two or three of the months this year, as a matter of fact, it was sixty-one for the year 1957. In 1943 and 1944 we were getting 110 tons per barge.

Q. Now, Mr. Harris, is the New York Central operation directly comparable with the other railroads that serve the New York area?

A. Is what, John?

Q. Let me put it this way: Is the New York Central operation in New York Harbor the same as or unique from the other railroads that serve the barbor?

A. Well, all of the railroads except the New York Central in serving Manhattan Island serve it by car float. We only have one remaining station in New York where we transport freight on car float to the station for delivery. That is a very small operation at Barkley Street in Lower New York, but our freight for Manhattan Island comes down on [fol. 2253] rail from Spuyten Duyvil from the railroad we have on the west side of Manhattan going down Canal Street, and deliveries are taken on that railroad to public facilities provided at 60th Street, 33rd Street, and the meat switches at 14th Street and St. Johns Park Station at Canal Street.

Q. Yes. Now, that land operation is distinguished from the other railroads who have to serve by car float, is that right?

A. Yes.

Q. Mr. Harris, is the New York Central constantly surveying its New York operations with a view to economize or for efficiency of operations?

A. Oh, yes.

Mr. Langdon: Did you say presently?

Mr. Colgren: No, constantly.

By Mr. Colgren:

Q. In that respect some of the operations are under modification, is that not right?

A. Under modification. There is consideration being given to modification. What do you mean? I don't understand.

Q. Well, what I have in mind, when a service or facility proves or is—let me phrase it this way: The New York Central is constantly looking for an improvement in its efficiency of operation within the New York Harbor, is it not?

A. Oh, that is so. As an example, I think, of what you are asking, is the closing of Pier 35 in the East River. That was one of our pier stations that was served by car [fol. 2254] float, and we found other means of handling that traffic. It had grown to a low ebb of business and rentals and maintenance of the facility caused us to close it.

Q. Yes.

A. We are considering others in New York.

A. Yes.

Mr. Colgren: I believe that is all I have, Mr. Examiner.

Mr. Langdon: I am wondering, Mr. Examiner, since Mr. Colgren has a second witness if we couldn't go ahead at this time and hear the second witness and then have the cross examination this afternoon to give us an opportunity to review this during the lunch period.

Exam. Boat: It is agreeable with me.

Do you have the other witness available, John?

Mr. Colgren: Yes, I do, but I think it would take more than a half hour that now remains before twelve-thirty, and may I make the suggestion that rather than put him on and interrupt our continuity of our examination whether we could recess for luncheon now and pick up perhaps at one o'clock or one-thirty.

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

We will ask Mr. Harris to step aside then for the moment, and then we will resume with Mr. French. You were sworn before.

[fol. 2255] Wesley F. French having been previously sworn, testified as follows:

Direct examination.

By Mr. Colgren:

Q. State your name, please.

A. Wesley F. French. I am Manager, Rate Cost Studies and Statistics, New York Central System, New York.

Q. Mr. French, what is your opinion of the use of gross ton miles as a proper divisor to ascertain the variability of the expense of harbor operations?

A. I recall, Mr. Colgren, that during my previous cross examination I had a question of that sort directed to me, and I observed at that time that the statistics of gross ton miles was not derived directly from the operations of harbor service. It is rather obtained from, generally, from the wheel reports of freight trains or passenger trains or some related statistics. It has to do with the line haul operation of trains between terminals, and it does not include the marine movements of a harbor or trucking in lieu of lighterage movements in the harbor area and so on. Nor by the same token does it include yard operations that might be performed by yard switching locomotives and so on, and therefore I question very much that we could invariably expect to find a correlation of particular importance between the movement of expenses, let us say, to be associated with the harbor and the output of gross ton miles.

Q. Well, would that be giving any consideration to heavy investment factor in harbor facilities?

[fol. 2256] A. No, sir.

Q. Would it give any consideration or have any bearing on the necessity for a fixed plant?

A. No, sir. You are speaking of gross ton miles?

Q. That is right.

A. Yes.

Q. Would it take into consideration any factor of the necessity of serving the entire harbor area regardless of volume of traffic?

A. No, it does not reflect the movement of traffic through the harbor.

Q. Well, under these circumstances, Mr. French, would it be presumed that the cost of individual harbor operations or that the investment in harbor facilities could be expected to vary with gross ton miles?

A. No. I just observed that I didn't think that it could be expected to vary with gross ton miles.

Q. Mr. French, in your opinion is the eighty percent out of pocket factor used and developed by the Interstate Commerce Commission Cost Section in the development of rail cost studies consistent with the application of the differing percents found in Appendix E of Senate Document 63?

A. Yes, I think it is.

Q. What is the basis of your conclusion in that respect?

A. Well, again you may recall, I was cross examined, [fol. 2257] I believe, on that subject previously, and I observed at that time that the New York Central had made an application of Appendix E percentages to their own freight operating expenses and rents and taxes, and that in so doing they had come up with a figure of approximately 78 percent, which I felt at least in the case of the New York Central supported the overall eighty percent. Now, that 78 percent in effect was the overall weighted average which resulted from the application of these individual percentages to the 1956 freight expenses of the Central.

Q. Have you since then made a further check along those lines?

A. Yes, I have. I made exactly the same type of check, or it was done under my direction, in connection with the 1956 operating expenses of the Baltimore and Ohio and the Central Railroad of New Jersey and the Pennsylvania.

Q. What was the result of that further check?

A. The Baltimore and Ohio came out with a weighted percentage overall of 79.5. The Pennsylvania was 78.5. They were very close to the New York Central in that respect. The Jersey Central was the low one. That was 74.3, if I recall the figure.

Mr. Langdon: Are we going to have the computations?

The Witness: Yes, I have them right here if you would like to have them, Mr. Langdon. You can look them over at lunch-time. Perhaps you would like to do that.

By Mr. Colgren:

Q. What is the significance of these figures to you, Mr. French?

[fol. 2258] A. Well, I think they all tend to confirm the use for overall purposes. When you are dealing with a whole body of operating expenses, freight operating expenses of the railroad, that to use eighty percent is a completely reasonable thing to do, but it also illustrates, I think, rather clearly that in arriving at that eighty percent or in supporting that eighty percent you had to take into consideration the various different percentages which have to be weighted into this overall picture.

Q. In other words, an eighty percent factor cannot be applied to each and every individual account?

A. That is correct, yes.

Q. Mr. French, what is your understanding of the development and adopting by the Interstate Commerce Commission of this average eighty percent factor for out of pocket determinations?

A. I understand it came about very much in this way: At the time that the rail line cost form A, a formula known as Form A, was first in the process of development it was worked out on the basis of the whole amount of freight expenses. In other words, what we would call fully distributed costs was the end product of that formula, and then if it was desired to find the out of pocket portion of those fully distributed costs it was necessary to rework the entire formula, because you went to the various operating expenses for the individual railroads or groups of railroads or territories, or whatever you were interested in that you had originally entered in the first go-around with Form A, and you applied these individual percentages [fol. 2259] and you brought that whole body of expense, account by account, down to the out of pocket or variable portions, and then you entered those in the formula and

processed them through. That meant doing the job in effect twice.

Well, obviously, as you know, Form A is a lengthy procedure, and it was desirable to find a more ready method of coming to the same end results, which the Commission devised. Apparently they had noticed that the application of these overall percentages centered somewhere between 70 or 80 or 90 percent, somewhere in that range, and they made further studies. Some of those studies are described rather well, I think, in their statement 4-54, to confirm or disprove, if you will, the application of these various percentages, and they observe there that their studies serve to confirm that, as I recall their language, the results seemed to center about—I think they used that word—center about the eighty percent. So they announced through the medium of their statement 4-54 that for rate cost study purposes in the freight field at least the overall eighty percent would be appropriate.

I think it is inherent, though, in what they did, and in the language of their statement in respect to the eighty percent that what they are dealing with there is the overall body of the operating expenses and not some select group of accounts.

Q. In other words, the eighty percent is not properly applicable to individual accounts?

[fol. 2260] A. That is correct.

Q. Or any small group of individual accounts?

A. That is right.

Q. As against the total accounts for which it was developed?

A. That is correct, sir.

Q. Mr. French, in your opinion, can solely related costs ever be used as a determinative factor in a rate controversy involving competitive traffic?

A. I certainly most earnestly believe that the industry would be very ill advised to support any position of that kind.

Q. Why is that?

A. Well, in the first place, a concept of that kind means that we will freeze into the minimum level below which

competitive rates cannot be justified an element of constant costs which will remain there as long as, technically as long as any of that traffic continues to move and will not vary with the fluctuations of traffic. It overlooks the concept that out of pocket costs, as we have ordinarily used it, in competitive situations is variable cost; that part of the cost which will vary in one direction or the other as the traffic flow varies. I think this is particularly important for the railroad industry because one of our major areas of cost is in the constant side.

We are a big property. We are a high geared industry, if you will. Most all of us are. And we are in a very competitive field where we must compete with people who can [fol. 2261] operate on much smaller margins of profit than we and still maintain themselves. That is because of the great constant cost element that we have. So if we must price our rates so as not only to protect ourselves against the cost of handling additional traffic, but as well cover some kind of a pro rata share, however you would like to figure it, of this constant area of cost, which is so big, we are going to be at a tremendous disadvantage, I believe, not only as competing among ourselves in setting rates, but particularly as meeting competition from other modes of transportation.

Q. Mr. French, along that line would the application of this solely related cost theory permit the application of a general rate scale within a territory applying to all points within a territory?

A. Well, I should think it would be very difficult to do such a thing. If I get the import of your question, Mr. Colgren, I think what you have in mind is that whatever carrier, whatever railroad could demonstrate that between any two given points in the territory that it had the lowest solely related cost, that carrier would be able to quote the lowest rate and thereby attract all the business, so that in effect you would have, if you predicated your rate on a strictly cost basis, you would have different rates for every two points you could conceive of, and in each case the low cost carrier would be the only one that would be

permitted to justify his rate. The others' costs would be too high. It would narrow the area in which management [fol. 2262] could operate to meet competition. That is my fear in this theory.

Q. According to that theory, Mr. French, isn't it true that each point of origin or each point of destination would reflect different costs?

A. Yes, I think we have an excellent illustration in the costs we have heard advanced here at this particular session of the hearing. We can see how at New York you would have one level of costs if you use that port, and it would naturally follow that at other ports you would have another level of costs, quite independent as to the effect of those costs caused by increments of traffic. I think the whole burden of cost evidence in this proceeding goes to illustrate that rather clearly as far as the port studies are concerned.

Q. Yes. If this solely related cost theory were followed to its ultimate, what is your opinion of its effect on the railroad operations?

A. Well, I think that there would no longer be any distinction between the costs that we would produce to justify competitive rates and the costs which we would look at if we were considering avoidable costs or costs in connection with abandonment or something of that kind. The effect on a railroad, I firmly believe, would be little short of a calamity. In the areas of competitive traffic about all we could expect to hold and claim a full share of on these solely related costs would only be traffic which if there is any more, which is captive to the rails, or perhaps [fol. 2263] some traffic that because of certain reasons could afford to pay that kind of a tariff. There don't seem to be too many of them any more.

Q. What is your thought in connection with the ultimate result as to the physical plant itself of a railroad?

A. I think that concept would put a premium on each railroad management doing everything it could to provide the cheapest possible plant, the cheapest possible service, and a minimum of service in order to keep it as cheap as

they could, because the man that did his job the cheapest apparently would be the only man allowed to compete.

Q. Well, then the emphasis would be on cost rather than service?

A. The emphasis very definitely would go to cost. Service would be a secondary consideration because you just couldn't quote a freight rate apparently, if you carry this through to its ultimate conclusion, unless you could justify the lowest solely related cost.

Q. And for the big railroads of the East, for example, with their large terminal operations and so on, that would be a very serious question?

A. Yes.

Q. Now, Mr. French, there was some reference in the record by Mr. Bongartz concerning information supplied in a letter dated April 28th. I believe it has subsequently been introduced in the record today as Exhibit 132.

[fol. 2264] Mr. Bongartz: Are you referring to Exhibit 119 that Mr. French did not have the benefit of seeing prior to the last hearing?

Mr. Colgren: Yes, that is it, except I don't agree with your statement that Mr. French had not had the benefit of seeing, as we hope to develop now.

Mr. Bongartz: I think his ignorance is on the record.

By Mr. Colgren:

Q. Referring to Exhibit 119, Mr. French, did you have the basic information necessary to apply the corrections that were supplied? If you recall, there was a revision in certain percents, or rather, a revision of one particular percentage drawn to our attention in that letter.

A. When I first got that statement, which later became this Exhibit 119, we looked it over and decided that we could not apply it to the material that we had at hand; that is, not apply it in any intelligent fashion.

Q. Why is that, Mr. French?

A. For the reason that this particular exhibit consisted of restating the percentage of tug hours ascribed to the Jersey City lighterage operation from about five and a

fraction percentage to around twenty-one percent. We didn't quarrel with that a bit except that we did not have the basic expenses, nor did we necessarily know which of the basic expenses, if we had had them, would be affected by this change in the tug hours.

[fol. 2265] Now, to illustrate that, since getting Mr. Talbott's exhibit and the supporting papers, Exhibit 125, I believe, of Mr. Talbott's, and the supporting papers thereto, it was included in that a recomputation with respect to this Jersey City lighterage that the Pennsylvania had evidently prepared and supplied. So I was just curious to see had we tried to apply this percentage where we would have come out.

I worked only the maintenance of way expenses, using the accounts that I discovered had been changed due to this change in the tug hours, which I wouldn't otherwise have known which ones they were, perhaps, and found that I had overstated the adjustment more than twice by attempting to just merely apply this thing as best I could without the basic figures.

Q. Yes. And this was after you had the information?

A. This was after I had it. I went back over it to see whether I had been in error there in not attempting the adjustment. I found I was still unable to make it in the same way as the Pennsylvania had finally produced it.

Mr. Bongartz: Just for clarification may I ask a question. Are you testifying that in looking at these work sheets that accompanied Exhibit 125 that you found that the Pennsylvania made this recalculation correctly?

The Witness: I am not questioning whether they made it correctly or not. I really don't know. I presume they have, but had I made it I wouldn't have gotten anything [fol. 2266] near the same result.

Mr. Bongartz: Regardless of what you did or did not do, you are not taking any issue with what the Pennsylvania did in this recalculation?

The Witness: Not at all.

By Mr. Colgren:

Q. Along that line, Mr. French, do you have any way of testing the accuracy of what the Pennsylvania did in this respect?

A. No. As a matter of fact, what I just said illustrates it. I can't very well test it inasmuch as when I attempted to rework the figures I didn't get close enough to them to constitute a test.

Mr. Colgren: Mr. Examiner, that is all I have on direct examination.

Exam. Boat: We can recess until two o'clock.

(At 12:25 p.m., the hearing recessed until 2:00 p.m. of the same day.)

[fol. 2267] AFTERNOON SESSION

2:00 p.m.

Exam. Boat: Come to order, gentlemen.

Mr. Colgren: Mr. Examiner, to complete the record at this point, I draw attention to the fact that around July 9, 1958, I addressed a letter to yourself, Examiner Marion L. Boat, with copies to Mr. Bongartz and Mr. Langdon, enclosing reproductions of certain rough notations, which underlay page 34 of Exhibit 115 of witness French. They were requested at page 2032 of the record. I suggest at this time that these be made an appendix or a part of Exhibit 115 of witness French.

Exam. Boat: Very well, that may be done. There will be a supplement to Exhibit 115.

(Supplement to Exhibit 115, Witness French, marked for identification.)

Exam. Boat: If I haven't already indicated, I intended to show Exhibit 134 received in evidence.

(Exhibit No. 134 was received in evidence.)

Exam. Boat: I believe, Mr. Colgren had concluded his direct examination. Are we ready for the cross examination of Mr. Harris now? Is that the witness?

Mr. Colgren: We have had two witnesses finish their direct. What is your pleasure?

Mr. Langdon: The Examiner asked if I was ready for [fol. 2268] Mr. Harris, and I am.

WALTER H. HARRIS resumed the stand and testified as follows:

Cross examination.

By Mr. Langdon:

Q. Mr. Harris, I think you referred to the New York Central rail line on Manhattan Island and said that distinguished the New York Central from the other New York Harbor lines; is that right?

A. Yes, sir.

Q. Well, now, in what way is that line of yours on Manhattan Island used in connection with the handling of export-import traffic?

A. It is used to an extent, we use both sides of the river for lighterage freight, about eighty percent on the Jersey side and about twenty percent on the Manhattan side.

Q. This export-import traffic that uses your line at Manhattan is put on lighters where; at 60th Street?

A. Right.

Q. Manhattan?

A. Right.

Q. You don't have any direct rail deliveries to any piers on Manhattan?

A. That is right.

Q. In other words, there isn't a pound of freight, is there, handled directly from ship to car on any New York [fol. 2269] Central pier or any other pier on Manhattan Island?

A. That is right.

Q. And you said that eighty percent of your lighterage freight originates on the New Jersey side?

A. That is so.

Q. And twenty percent on the Manhattan side?

A. About that. Those are rough percentages.

Mr. Colgren: That was export-import.

By Mr. Langdon:

Q. Export-import traffic.

A. Export-import, yes. I might say that when I drew the comparison in the first place on Johnny's question there, Mr. Colgren's question, I was explaining that all our traffic, including principally the Manhattan delivery freight, that is, for the Island of Manhattan domestic freight, we brought it in by rail, whereas the rest of the railroads in the harbor had to float it across the Hudson River to the steamship piers or float bridges provided on Manhattan Island.

Q. And your testimony, in other words, is limited to the handling of domestic freight. The comparison was drawn in connection with handling of domestic freight?

A. That is what the comparison was drawn on, yes.

Q. Mr. Harris, I think you also referred to special barges that were used in connection with the handling of domestic cement traffic at New York. Did I hear you correctly? Are they special barges?

[fol. 2270] A. No, not special barges. The container into which the cement is loaded at the mill is a special type of container and the container itself is lifted from the car onto an ordinary deck scow and taken to the customer.

Q. You don't have then, as I understand it from your testimony, any specially equipped equipment from the point of view of the marine movement of this cement traffic?

A. We have a few boats. I think I told you that we had a plant at 60th Street in New York where cement was blown into the cars, into the barges rather, similar to the CNJ operations, Lehigh Valley.

Q. You have a few of those. They are special.

A. They are confined to the cement traffic, yes.

Q. Do you call them special barges or what?

A. We just call them cement barges. We make some changes on an ordinary barge, and, of course, provide a room or locker into which the Fuller-Kingan pump is

stored, and put a panel in so that electricity can be employed in operating the pump.

Q. And they are used exclusively in the cement business?

A. Those few, yes. We have three.

Q. You referred, I think, also to the ups and downs and mostly downs in your traffic at New York, your export-import traffic, and the extent to which you were operating at less than capacity at the present time. Now, Mr. Harris, in an operation of this kind, namely the movement of [fol. 2271] import-export traffic into New York, how would you measure your capacity? If I may explain the question perhaps a little more. Is capacity in any railroad operation measured by the bottleneck, if you want to call it that, in that operation?

A. Well, I should say yes.

Q. In other words, in the handling of traffic at New York, export-import traffic, if you had a four track railroad or any size railroad from Buffalo to New York, and a lighterage pier as big as the State of Texas, but you didn't have enough lighters or tugs to handle the business, why your capacity would be measured, would it not, by the capacity of the tugs and barges, is that correct?

A. Naturally in any operation where there are tugs and barges or locomotives and cars, you can't handle more than the available equipment if there is no other means of obtaining it other than ownership.

Q. Wherever that shortage or deficiency may occur in the actual flow of the traffic, is that right?

A. I didn't understand you.

Q. Wherever that shortage or deficiency may occur in connection with the flow of the traffic, that marks the point where you measure the capacity, is that not so?

A. Yes. The only thing, I wish we had reached some of those situations in recent years. We wouldn't be here. But I would say this, that there are so many factors beside just equipment, utilization of equipment as well as the equip-[fol. 2272] ment itself. I said this morning my figures, which are for recent months, showed about a sixty ton average load in an average barge, whereas their capacity was about 350. I haven't any figures, but I know from my own information that we are towing many single boats to

steamship piers, far distant points, that is, Bush Terminal and Staten Island, and wherever it may be, whereas if we had the business we can tow two or three or five or six. Those things have to be exhausted before you arrive at the point where you can say we can't handle freight.

Q. In a case, Mr. Harris, where you are comparing the operations of two railroads, all the other things being equal, if one is operating at seventy percent capacity and the other is operating at one hundred percent of capacity, why, again, on the assumption that all other things are equal, the unit costs of the railroad operating at capacity would be less; is that right?

A. It would seem so, yes.

Q. I mean, that follows naturally as an operating proposition, doesn't it?

A. Unit cost. Now, wait a minute, you said unit cost of a railroad operating 100 percent would be less than unit cost of a railroad only operating at 70 percent; is that what I heard?

Q. Yes, and other things being equal.

A. Yes, I would say it would be so, yes.

Q. It follows as a matter of course.

A. Usually the more business you have the lesser your costs.

[fol. 2273] Q. Now, you mentioned, Mr. Harris, this banana pier of yours. You appreciate, of course, that the other railroads of New York, some of them handle bananas in carload service directly without going through your facility?

A. Oh, so do we.

Q. And you do, too?

A. Oh, yes.

Q. In other words, this facility of yours is only used for part of your banana traffic?

A. It is used for the United Fruit, the major banana outfit. You have a few independent outfits, like the Standard Fruit and Vegetable and Dixon Banana Company. Dixon brings it in on the Grace Line and Standard over Pier 613 on the East River.

Q. How do you handle those bananas?

A. We load the empties to the car floats, take them to

the steamship pier, where the bananas are loaded from ship to car by the employees of the steamship company or their agent, whoever it may be. It is not a railroad obligation to load to the car.

Q. And then you move that?

A. We move it by car float to Weehawken, put it through the float bridges and on rail.

Mr. Langdon: That is all.

By Mr. Bongartz:

Q. I have a couple of questions, Mr. Harris. Mr. Harris, you mentioned your experience during World War 2. Did [fol. 2274] the New York Central have occasion during that war period to charter marine equipment?

A. Yes.

Q. You chartered scows?

A. That is right.

Q. And barges?

A. That is right.

Q. Did you charter anything else?

A. No, barges and scows.

Q. That situation as it applied during the war could hardly be considered the normal peacetime situation, could it?

A. Oh, granted the volume of freight and the type of freight we received made it possible to put a good load on a barge. The trouble today is that the class of freight and the volume of freight is—well, we call it straw hats. That is what we are getting to move to the steamship piers. Of course, we provide the service to the pier and don't get the corresponding—

Q. You provide the service now in these peacetime years which the trade demands, isn't that correct?

A. That is right.

Q. And that is a different kind of demand than you had during the war?

A. There may have been differences, Mr. Bongartz, but the obligation existed during the war as well as it does in peacetime to make delivery to ships before they sail.

[fol. 2275] Q. Well, of course, the basic thing is delivery of cargo to ship, we understand that, but all of these

demands which dictate less than capacity floating and lighters which you have now did not exist during the war, is that not correct?

A. I grant you that there is a great change between wartime business and peacetime business.

Q. Right. Now, you mentioned as a matter of wear and tear on marine equipment when it is laid up?

A. That is right.

Q. What kind of service does the New York Central perform on this laid up marine equipment. Let's take a scow? What do you do with the scow when you lay it up?

A. Don't do anything but tie it up.

Q. Just tie it up?

A. Yes, sir.

Q. And leave it there until you want to use it again?

A. That is right.

Q. Where does the maintenance come in on that?

A. The maintenance is figured on a long term basis.

Q. Long term basis, which includes, of course, use of it?

A. Use and whatever wear and tear or the deterioration of that vessel in the water.

Q. Well, the wear and tear on a piece of marine equipment like a scow is really in its operation, isn't it, Mr. Harris, loading of it and the propelling of it around the harbor?

[fol. 2276] A. That is true. In other words, there is more likelihood of damage to a barge or scow if it is being used than if it is tied up, but we also have instances—we had grain boats of wooden construction, and we had to get rid of them because the demand for grain boats was so spasmodic that the wooden boat up out of the water, when you came to use it, the seams were open and you couldn't use it. So there was more damage occurring in the wooden grain boat under those circumstances than under use.

Q. Which time are you referring to?

Mr. Colgren: He asked you what time you were referring to, Mr. Harris?

The Witness: Within the last eight years.

By Mr. Bongartz:

Q. I assume that you have a general knowledge of how many scows and lighters and barges you have laid up in the last year or so?

A. You mean tied up and not used?

Q. Yes.

A. Yes, I have.

Q. You make periodic reports, don't you, of this to the Association of American Railroads regarding the laying up of certain types of marine equipment?

A. No, sir.

Q. You don't?

A. We make reports to them on the ownership of vessels, [fol. 2277] but not the in or out of service use.

Q. Well, I show you a statement entitled "Association of American Railroads Car Service Division, Marine Equipment Owned and Used by New York Harbor Roads as of June 1, 1956." There is a column there for the New York Central, and I will ask you to look at it and tell me whether this is a correct statement.

A. All right.

Q. It is divided as between tugs, car floats and various types of marine equipment. Will you look that over, Mr. Harris?

A. That is Paul Miller's report. No use of me saying he doesn't have it, and we must furnish it.

Q. Will you in each instance read from that report for each class of marine equipment the number of units owned by the New York Central and the number of those units laid up as of that date?

A. Yes. The New York Central, tugs owned, eighteen; in shops, six; laid up, service, one; laid up, unfit for repairs, nothing, service, eleven.

Q. When something is laid up unfit for repairs that is practically the end of it, isn't it?

A. Well, I don't know what that would be. I don't know. Unfit for repairs would look to be as a scrap boat.

Q. All right. Let's go down to the next category.

A. All right, sir, which one? Car floats, we own 37. We had four in the shop, and we had thirty-three in service.

[fol. 2278] Q. All right, the next one.

A. Self-propelled lighters, we own none. Gas hoist lighters, we own fourteen, and there is a note here which says three are steam and eleven gas, fourteen in service.

Grain barges, chartered six, chartered last report 12-1-55, one, covered barges 143. That included 27 reefer barges, 12 in the shop, 12 waiting repair, laid up, serviceable, fourteen, and laid up, unfit for repairs, twelve, in service, 100, charted, none.

Scows owned, 74; in the shop, 5; two laid up awaiting repair, 67 in service, and that is it.

Q. All right, now I will get you to look at this statement from the same source, which gives similar information for December 1st of 1956.

Mr. Colgren: What was the date on that?

The Witness: June 1, 1956.

December 1, 1956. 18 tugs owned, 5 in the shop, 1 laid up serviceable, 12 in service.

Car floats, 37 owned, 3 in the shop, 1 laid up, serviceable, 33 in service.

Hoist lighters owned, 14, fourteen in service.

Grain barges, 5, chartered, and on the last report there were six. That is of 6-1-56.

Covered barges, 130, 6 in the shop, 5 laid up awaiting repair, 2 laid up serviceable, 5 laid up unfit for repairs, [fol. 2279] 112 in service, one chartered.

Scows 74 owned, 1 in the shop, 1 laid up awaiting repair, 72 in service.

Now, the only thing—a man has to defend himself just a little bit—in this report, while I am not disputing it, and I perhaps should have known that this report was being made, it is made from my office to the AAR apparently, but I had no recollection of it.

Q. I am not intending any criticism of you, Mr. Harris. Your organization would obviously take care of such things. Thank you very much.

Mr. Colgren: No further questions on redirect, Mr. Examiner.

Exam. Boat: You are excused, Mr. Harris.

The Witness: Thank you.

WESLEY F. FRENCH resumed the stand and testified as follows:

Cross examination.

By Mr. Langdon:

Q. Just a few questions, Mr. French. You criticized as inapplicable, I think, the use of gross ton miles as a factor to measure the variability of Account 408, which is marine operations; is that correct?

A. I didn't say that it was completely inapplicable. I said that it probably wouldn't bear any direct relationship to the movement of the expenses that are quoted in Account 408.

Q. What factor or factors would you prefer to gross ton [fol. 2280] miles in measuring the variability of that particular account?

A. I think you probably would have to analyze that account into its many parts because it is an account which covers a number of different tyeps of expense. There is the—

Exam. Boat: What is the title of the account?

The Witness: Operating Floating Equipment Account 408. It is an account which will embrace, of course, the cost of fuel and supplies on the marine equipment of various kinds. It will embrace the cost of the wages of the crews and also certain employees that are actually not on the boats themselves, such as tug dispatchers, for example, and office employees. There are certain overhead charges of superintendency and other items of that sort which to some extent are allocable to that account. It covers a multitude of items which are related to the marine operation, and I think that probably what would need to be done—this is just an opinion, but I haven't done such a thing, but what I think would need to be done would be to analyze this account very thoroughly and then to go through a study to try to find what, if you could find just what items of marine traffic, however they might be expressed, tug boat hours, tonnage handled, lighters towed, or whatever it might be. It would just have to be a trial

and error process, I suppose, until you finally would find that certain areas would presumably show some relationship to the movement of these statistics. I don't know as you could just tie to one traffic factor and say that that [fol. 2281] would show a positive relationship with an account that covers so broad a field as 408.

Q. Can you give me a factor that would be better than gross ton miles even though perhaps not perfect?

A. Well, as I say, I think it would have to be analyzed and studies of the type I have endeavored to mention would have to be made, and then you would know what factor—I don't know what factor or factors. Maybe one factor could be found. I don't know that.

Q. You are not in the position here, though, to suggest any better factor than gross ton miles?

A. Well, I think it is obvious that it would be unwise to use gross ton miles, which are made in the road haul land operation, if you will, of freight trains, and say that that would bear direct relationship to the movement of expenses in marine operations in the harbor. It would bear some relationship probably because the two are an interrelated thing.

Q. I will ask you again: You don't have any factor that you can suggest that would bear a better relationship?

A. No. I wouldn't attempt to guess it because it could be so many things. There are many statistics that arise from harbor operations.

Q. Now, Mr. French, in your testimony this morning you left with me at least the impression that the reason the Cost Section abandoned the method of measuring vari- [fol. 2282] ability by individual accounts was that when they got all through they added up to about eighty percent. Is my impression of your testimony correct?

A. I didn't say they abandoned the method necessarily. I said they merely found an alternative method which in the final analysis would produce on the overall about the same answer, in their opinion, and confirmed by various tests which they made.

Q. And is it your testimony then that—strike that.

Mr. French, are you familiar with the studies which the

Cost Section made over a period of years and during times when traffic was fluctuating of the relationship of these individual accounts to totals of the higher expense during this period of ups and downs in traffic?

A. Well, I am familiar, I think, to the degree that most of us that have not been personally engaged in these studies are. We have read of them in numerous publications and so on, that the Commission has issued, which are rather exhaustive, I think, on the point.

Q. What was the result of those tests that the Commission's Cost Section undertook? What was the general result?

A. Numerous of them have stated in the various tables and publications beginning back with Senate Document 63, where they reported on the first test that they made and on tests that others had made and commented on them and [fol. 2283] so on, and we have it as late as Statement 454, where they have made these later tests to which I referred this morning. They were dealing mostly on a territorial basis at that time, if my recollection is correct.

Q. Did they find that during this period of fluctuating traffic that these individual accounts reflected different proportions of total expenses, or did they find that these individual accounts represented and continued to occupy roughly the same proportion of total expenses no matter whether the traffic went up or went down?

A. Oh, I am sure they found that there were certain areas in which the accounts varied very directly with the traffic. We know that.

Q. Is it your testimony then that in accordance with the studies of the Cost Section, the percent or the individual accounts, where the percentage of variability was low, represented a lesser proportion of total expenses when the traffic went up and conversely represented a greater proportion of the total expenses when the traffic went down?

A. No, not necessarily, that wouldn't follow.

Q. Wouldn't that necessarily follow if there were differences, great differences, in the variability of individual accounts; wouldn't that necessarily follow?

A. No, you would have the overall operation there to consider, the size of the plant and so on might vary as [fol. 2284] between these two periods which are talked about.

Q. You take the position, don't you, that your marine expenses are only ten percent variable with traffic. I mean, your maintenance expense for marine equipment?

A. That is the percentage which is in the Appendix E scale of variable ratios, yes, and I used that percentage.

Q. Now, have you studied what proportion marine maintenance expense is of total marine expenses over the years on the New York Central as traffic has gone up and down?

A. No.

Q. Well, wouldn't it follow that if you are right in thinking that marine maintenance expense is only ten percent variable that when traffic has gone up marine maintenance expense would be a lesser proportion of the entire expense than otherwise?

A. Well, it might be.

Q. Wouldn't it necessarily follow?

A. It would depend to what extent this increment of traffic would affect the other accounts. I would expect that in most instances it would follow, but I don't think it would be invariably so. That is a very conclusive term.

Q. Wouldn't it have to be so if your theory is right; namely, that marine maintenance expenses are ten percent variable; wouldn't it have to follow?

A. No, I don't agree that it would have to be so. It [fol. 2285] probably would work that way in the vast majority of cases, and you would expect to have that result, but there could be extreme circumstances that might alter it.

Q. You haven't made any such test of your individual, or, rather, to your percents of variability by individual accounts?

A. No.

Q. You haven't made any such tests in the case of the New York Central at all?

A. That is correct. The only test I made was in the sense of the test I described to you before consulting with your engineers and maintenance people.

Q. Now, you referred to solely related expenses, and if I gather your testimony correctly you regard solely related expenses as equivalent to constant expenses, is that correct?

A. No, not equal to constant expense. Solely related expense I believe comprises both variable expense and constant expense.

Q. What is your definition of a constant cost?

A. Well, a constant cost, in the sense I was talking of it, is a cost which will remain fixed or relatively fixed, or at least does not fluctuate with increments of traffic. Traffic can move upward or downward without affecting that particular portion of cost.

Q. Do you regard solely related expense as equivalent to a constant expense in that connection?

A. It has an element of constant expense in it, in my [fol. 2286] opinion, yes.

Q. Well, now, is it your contention then—strike that.

Take these three cement barges that according to Mr. Harris, as I understood his testimony, are useable only in cement traffic, and in effect, I assume, are assigned to that traffic. Now, let's assume that you were asked to price out and determine the cost of moving the cement traffic where this particular equipment was used. Now, in determining that part of the cost represented by the operation of this special equipment, would you take 100 percent of that cost or would you take something less than one hundred percent of the cost? I am speaking now with relation to the three barges.

A. All right. Now, if you want to know the cost of moving more or less traffic in those three barges, assuming you are going to have the three barges anyway and you want to establish the minimum level of cost that you can live with, you will use the variable cost if you can determine it for the maintentnce and operation of those three barges. Now, if you want to find out the overall cost of the barges, including that element which will be independent of the movement of traffic, whether it goes up or down, and which you will pro rate, I suppose, over some assumed level of traffic, you can do that, but that would not be what you would do to establish the lower limits of your cost. That

would merely be an average cost for operating these barges and would presuppose a certain fixed level of use or traffic [fol. 2287] to be handled when you determined what you were going to do with them.

Q. Let's assume a capacity operation, and you are requested now to provide information on the cost of this particular cement traffic. Now, am I to understand that you would supply your management with any less than one hundred percent of the cost of operating and maintaining this special equipment?

A. Well, if I have a capacity operation on my existing three barges the only answer that I can see, if we are going to still do more business.

Q. No, I am asking you to determine the cost of the operation as it exists today under the condition that I have assumed.

A. It would still apply. You would still have your so-called minimum level of cost, your variable level that would be variable with the amount of use. In this case your use happens to be one hundred percent. Tomorrow maybe it is ninety, and the next day ninety-five and so on, the cost will be varied as the amount changes.

Q. In other words, you have got a cost on Monday and a different cost on Tuesday and a different cost on Wednesday?

A. If you figure it this way or this year, next year or the year after, whatever time period you want to consider.

Q. Well, let me get you clear now. You would inform your management that the cost of this particular cement operation involving the use of this equipment, and it is [fol. 2288] being used to capacity, and I mean capacity, Mr. French, in the normal way that you mean it and other operating people and other cost people, that you would inform your management and give them a cost that was less than one hundred percent of the cost of this equipment; is that correct?

A. I would give them a cost broken in two parts. Now, what they would be interested in, I presume, from the import of your question is in finding the overall cost per ton or per tug hour or how you want to express it, or

barge hour of owning and operating these barges. That would be an overall fully distributed cost.

Q. One hundred percent cost.

A. The whole one hundred percent.

Now, we could break that cost down into its two chief component parts: That part which the management would have to live with regardless of how much traffic utilization he got out of those barges, and that part of the cost which management would find would vary as traffic varied. They might, for example, want to have a cost figure of some kind for forecasting purposes, let us say, and it would be some forecast as to the traffic those barges were going to handle. They want to forecast their expenses in connection with it.

Q. If this operation were at capacity you would tell your management then under those circumstances, I gather, that so far as capacity cost is concerned one hundred percent is [fol. 2289] the correct one?

A. Capacity cost?

Q. Or cost at capacity.

A. You are talking now of an absolute capacity?

Q. Absolute capacity, yes.

A. Well, if you had an absolute capacity you would still have your two elements of cost which would add up to the total. You would have your variable cost, and you would have your constant cost. The mere fact that you had one hundred percent capacity would not overcome those two elements of cost. They would be there, and they would be observed as soon as the traffic became less than capacity. You would see the effect on the variable portion. The constant portion would be there anyway regardless of your traffic.

Q. Now, would you have, Mr. French, with this constant cost, would you have a constant cost that you couldn't assign that would arise from the operation and maintenance of these three special pieces of equipment?

A. You couldn't assign?

Q. You could assign that constant cost, couldn't you?

A. Oh, I can assign, yes. I can assign cost to anything, surely. You can assign costs wherever there is some kind of a rationalization or some purpose to assign them.

Q. Exactly. Now, when you can assign a cost you make it a direct cost, don't you?

[fol. 2290] A. Oh, no, sir, not in my book you don't. A direct cost is a cost you don't have to assign. It assigns itself.

Q. Well, in what respect then is this what you call constant cost arising in connection with the operation of these three barges? Why doesn't that assign itself?

A. It does assign itself to the barges.

Q. Exactly.

A. Not to the traffic. The barges handle it.

Q. Well, the barges are used in the service.

A. I can't assign that or allocate the cost to the traffic if I so desire to do it, but that cost is not incurred because of the traffic the barge is handled. It is incurred because the barges exist.

Q. The minute you can assign a cost that isn't a constant cost, isn't that correct?

A. Would you mind repeating that?

Q. The minute you can assign a cost that is not a constant cost.

A. You can assign a constant cost, and it remains a constant cost.

Q. Wait a minute. Answer my question, please. The minute you can assign an element of cost it is not a constant cost, isn't that true?

A. No, I don't think it is.

Just assigning a cost, assigning a cost merely means this: [fol. 2291] You are saying you have this element of cost that is a constant and you are trying to find a home for it, so to speak, and you relate it, let's say, to the tons the barge handles or to the amount of hours that the barge captain is paid for, or something like that, some basis of relationship, but it doesn't mean that thing in itself is not a constant cost.

Q. You are trying to find a home for it. All right. Now, what home would you find for less than one hundred percent of the cost of operating this special equipment? What home would you find for it? Where would you assign that cost? How would you get rid of it?

A. Well, here is what I would do to get rid of it, to find the cost of handling traffic. I would consider only two expenses that were affected by traffic and not by the cost of ownership or any of these other extraneous considerations that do not vary with increments of tonnage or less tonnage as the case may be, changes in the tonnage. That would bring me down to my so-called floor, my base cost. Now, naturally if I were going to attempt to set a rate I would like to see the rate as much above that floor as I could, obviously, but in some cases I know I am going to have to stay quite close to that floor because of competitive situations, but I have to find that part of my cost as a base from which to work because if I take the whole thing at a start I am assigning to the movement of traffic, if you will, costs that don't directly vary with traffic or have [fol. 2292] a direct relationship.

Q. Well, let's assume in the example that we have been talking about that the rate that is involved covers all expenses, all the out of pocket expenses, but it falls short of covering the full cost of owning and operating these three barges by, let's say, ten percent. Now, would you in those circumstances regard that as a compensatory rate?

A. I am afraid you lost me there a litle bit. Could I hear that question read back, please?

Q. I will be glad to restate it.

A. Would you repeat it? All right.

Q. Let's assume in a particular circumstance involving this special equipment that the rate covers the out-of-pocket expense, but falls short of covering the full cost of this assigned equipment by ten percent, the assigned equipment being the three barges. Now, would you regard that as a compensatory rate?

A. It covers the variable cost but falls short of the total cost, is that correct?

Q. Yes.

A. If that is the case I would consider that a compensatory rate.

Q. Even though it falls short of covering the directly assignable full cost for the three pieces of equipment, the three barges?

[fol. 2293] A. It is compensatory insofar as the movement of that traffic is concerned.

Mr. Langdon: That is all.

Mr. Bongartz: No questions.

Redirect examination.

By Mr. Colgren:

Q. I have a question on redirect, Mr. Examiner.

Mr. French, is it your understanding that the percents variable in Appendix E of Senate Document 63 are averages which reflect the long term view?

A. Yes, it is.

Q. In other words, those percents do not reflect any static condition?

A. That is correct.

Q. As of a particular time?

A. That is correct.

Mr. Colgren: That is all I have, Mr. Examiner.

Exam. Boat: Well, you may be excused, Mr. French. It looks like we have reached the end.

Offers in Evidence

Mr. Langdon: I think we forgot to offer the work sheets that underlie Mr. Talbott's Exhibit 125, which were distributed some thirty days or so ago through Mr. Colgren, and with your permission, I would like to have an exhibit number on them, and they ought to be in the record in the same way that the other work sheets are in the record.

Exam. Boat: I know that he referred to that earlier set [fol. 2294] of work sheets during his testimony.

Mr. Langdon: The earlier set is in the record. This is the revised set that accompanied Exhibit 125 and is distributed on August 16th.

Exam. Boat: I assume it is part of that exhibit. That is this matter here that you have reference to.

Mr. Langdon: Yes, sir. There wasn't an exhibit number assigned to that.

Exam. Boat: You want a separate exhibit number on that?

Mr. Langdon: Yes.

Exam. Boat: Very well, we will assign Exhibit No. 135 to the work sheets.

(Exhibit No. 135 was marked for identification.)

Mr. Langdon: I offer it.

Exam. Boat: That will be received in evidence as Talbott's Exhibit 135.

(Exhibit No. 135 was received in evidence.)

Exam. Boat: Off the record now.

(Discussion off the record.)

Exam. Boat: On the record.

Mr. Bongartz: Mr. Examiner, I would like to offer in evidence and have marked and filed as late-filed exhibits, because they will have to be reproduced, the statements to [fol. 2295] which I referred in the cross examination of the witness Harris, regarding marine equipment at New York Harbor. This statement includes all of the railroads in the New York Harbor as well as the New York Central. I understand from Mr. Colgren that he has no objections to these statements being received in evidence. The first one is June 1, 1956, and the other one is December 1, 1956. So far as I am concerned I would refer only to Sheet 135, as far as the June 1, 1956, report is concerned, and sheet 136 with respect to the December 1, 1956 report.

Exam. Boat: Do you wish to submit copies for the record now?

Mr. Bongartz: I think I had better retain them, sir. I only have the one copy. Could I have them reproduced and file them as late filed exhibits?

Exam. Boat: I think it could be taken care of that way.

Mr. Bongartz: Would you give them a number now?

Exam. Boat: You can furnish them in about ten days?

Mr. Bongartz: Or less. I think we can file it sooner.

Exam. Boat: I don't think we should give it a number now, Mr. Bongartz.

Mr. Bongartz: Give it a number later.

Exam. Boat: As far as I know, there won't be any other late-filed exhibits.

Mr. Bongartz: I will have them either photographed or [fol. 2296] try to get additional copies.

Exam. Boat: I think in that instance we could assign a number to it, although that isn't our practice ordinarily.

Mr. Bongartz: Whatever you desire.

Exam. Boat: It will save advising the parties and everybody will know.

Mr. Bongartz: We will just have it on the record.

Exam. Boat: You will have it numbered so everybody will have the exhibit with the numbers on them?

Mr. Bongartz: Yes, I will number the copies.

Exam. Boat: That will be filed within ten days as Exhibit No. 136, the statement of equipment of New York Marine Equipment of New York Harbor Lines?

Mr. Bongartz: That is right, owned and used.

(Exhibit No. 136, to be furnished, was marked and received in evidence.)

Exam. Boat: Off the record.

(Discussion off the record.)

Exam. Boat: On the record.

The parties desire a full report in this proceeding, I assume, and briefs will be due December 15, 1958.

Mr. Colgren: Do you want to limit the number of pages in the brief, sir?

Exam. Boat: As long as I get good pages, I don't care.

Mr. Foley: Would it be possible, Mr. Examiner, for [fol. 2297] either us to agree or you to order that if the Cost Section reports to you in writing its views on costs that we be notified and given an opportunity to see the report of the Cost Section? In other words, we faced this sort of problem in the iron ore case: The Cost Section made a report, it was not a part of the record, and yet the Examiner acted on it and the Commission acted on it and was wrong, and the Commission had to call it back and revise it. I think the Administrative Procedure Act, as a matter of fact, calls for an opportunity to know whatever the Examiner acts upon, and I do think it is only fair to

us, not that they supply us with copies, but that we be notified and given an opportunity to see what they have reported. I can't understand any consideration against that. In fairness it seems that we are entitled to know what advice is given to you in private.

Exam. Boat: Well, I think that my view on that would be that certainly I should apprise you in the report of the extent to which I have considered costs and what I have considered in that connection.

Mr. Foley: I think we are entitled to know it before we have the predetermination of an Examiner's report. As a matter of fact, in other administrative proceedings, such as the CAB it is universal for the cost people to put in their evidence as a part of the case and you have a chance to meet it then. I mean, the Board's staff put in their evi- [fol. 2298] dence. Here it is a little more informal, but I still think that both under the Administrative Procedure Act, and I think as a matter of general fairness in administrative proceedings we are entitled to know what they tell you before you have made a determination.

Exam. Boat: Well, I will take that request under advisement, Mr. Foley.

Mr. Foley: I might say, Mr. Examiner, that we have requested counsel south of New York to stipulate or to ask you to join us in this request and they have not. I wouldn't be at all surprised if they might want to use it later in connection with appeal, and it makes it very important that we know what I have asked you to allow us to know.

Exam. Boat: We will, as I said, take that matter under advisement.

If there is nothing further, the hearing is closed.

Thank you for your cooperation.

(At 3:10 p.m., the hearing was closed.)

in printing).

[fol. 2298a] Secretary's Certificate to transcript (omitted

[fol. 2299]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 6615

EQUALIZATION OF RATES AT NORTH ATLANTIC PORTS

F.S.A. No. 32204

IMPORT AND EXPORT RATES FROM AND TO NORTH ATLANTIC PORTS

Transcript of Hearing—Tuesday, May 24, 1960

The above-entitled matters came on for oral argument before the Commission at 10 o'clock a. m.

Present: Chairman Winchell, and Commissioners Freas, Tuggle, Hutchinson, Murphy, Walrath, McPherson, Goff, Webb, and Herring.

APPEARANCES:

John H. Colgren, 466 Lexington Avenue, New York 17, N. Y., appearing for Respondent Railroads.

S. H. Moerman, 743 Investment Building, Washington, D. C., appearing for State of New York, City of New York, Port of New York Authority, et al., in support of Respondents.

Robert G. Bleakney, Jr., Boston and Maine Railroad, 150 Causeway Street, Boston, Mass., appearing for the Boston and Maine Railroad, New Haven Railroad, and New York Central Railroad, Respondents.

[fol. 2300] Henry E. Foley, 10 Post Office Square, Boston, Mass., appearing for Massachusetts Port Authority, Intervenor.

Scott W. Scully, 232 St. John Street, Portland, Me., appearing for Maine Central Railroad Company, Respondent as to export rates, Protestant as to import rates.

Jervis Langdon, Jr., 301 B. & O. Building, Baltimore, Md., appearing for Protestant Railroads.

John W. Hanifin, 1500 First National Bank Building, Richmond, Va., appearing for Hampton Roads Carriers, Respondents and Protestants.

Warren Price, Jr., 1039 Investment Building, Washington, D. C., appearing for Delaware River Port Authority, Protestant.

David Berger, City Solicitor, Philadelphia, Pa., appearing for the City of Philadelphia, Intervenor.

Charles R. Seal, 254 Granby Street, Norfolk, Va., appearing for Virginia State Ports Authority and Norfolk Port Authority, Protestants.

William L. Marbury, 900 First National Bank Building, Baltimore, Md., appearing for Maryland Port Authority, Baltimore Association of Commerce.

Earl L. Saunders, Department of Agriculture, Washington 25, D. C., appearing for Secretary of Agriculture.

Malcolm D. Miller, G.S.A. Building, Washington 25, D. C., appearing for Executive Agencies of United States Government, except Department of Defense.

[fol. 2301]

PROCEEDINGS

The Clerk: The Commission is now assembled for the purpose of hearing oral argument in I&S 6615, Equalization of Rates at North Atlantic Ports, and Fourth Section Application No. 32294, Import and Export Rates from and to North Atlantic Ports.

Please lend your attention.

Chairman Winchell: Mr. Colgren, Mr. Bleakney, Mr. Moerman, and Mr. Foley, have you agreed on the division of your time?

Mr. Colgren: Yes, sir, we have, and we have notified the time clerk. I propose to take 50 minutes myself, divided between original presentation and rebuttal. Mr. Moerman will come next. That is a slight change in the order. Using 25 minutes. Mr. Bleakney proposes to use 35 minutes, and Mr. Foley 25 minutes.

Chairman Winchell: You may proceed.

ARGUMENT OF JOHN H. COLGREN

Mr. Colgren: If it please the Commission, my name is John H. Colgren. I am an attorney for the New York Central Railroad, and in this proceeding representing all of the Respondent rail lines who are seeking to equalize rates on export-import traffic to and from so-called Affected Territory, which is roughly what we know as C.F.A. territory.

The issues in this proceeding are simply what I just [fol. 2302] stated, that we propose to establish an equal rate scale with our rival railroads which serve the southern tier of the North Atlantic ports. Those ports are Philadelphia, Baltimore, and Hampton Roads area.

The present disparity in rates which exists is quite minor from a money standpoint. It amounts to three cents difference on 100 pounds, New York over Baltimore. Baltimore is the rate-setting port.

The reason that this long-standing differential was sought to be removed is the plain fact that the northern railroads found that they were not getting traffic. It is a pure question of competition.

To establish that, the studies that were entered into disclosed that the roads serving the northern tier ports were handling such a negligible portion that it defies almost understanding.

Our studies developed that the railroads serving the Port of New York, which is the major port in the North Atlantic range, were seeking to equalize for the reason that out of the traffic which moved through the North Atlantic ports, these Respondent carriers were getting something like 25 per cent.

You will hear later on quite a bit of talk, I think, from our opposition that after sundry and illogical deductions of

various types of traffic, that New York gets somewhere in [fol. 2303] the neighborhood of 62½ per cent of the traffic.

But, gentlemen, that is not the point. The precise figure for you to keep in mind is the fact that we get 25 per cent of the total traffic to and from this Affected Territory.

Now, in order to clarify and exemplify as well as possible the competitive situation, I have had caused to be prepared three maps. Duplicates are before each of you gentlemen.

The first one, if I may point out here, shows the Respondent carriers and the means by which they reach the Affected Territory. The Affected Territory is in the wash pink color.

You will note the coverage which is made of the Affected Territory by the Respondent carriers. Map 1, bear in mind, is only the Respondent carriers. It clearly shows the situation of the New England carriers and how they make their connections to and from the Affected Territory in handling this export-import traffic.

On the large map I would like you to note the paucity of service accorded the Affected Territory. While there is ample coverage, as I will demonstrate by turning to Map No. 2, Map No. 2 is, the broad lines, major routes of the competitive carriers who presently have a rate advantage to the ports which they serve.

You will note in the affected shaded territory the tremendous coverage of that territory and the competition [fol. 2304] which they give to the Respondent carriers serving northern tier ports.

The third map is a combination of the two, and is merely to point out, as clearly as possible, the intense competition and the competitive forces which we must face. The red lines are those of Respondent carriers, the yellow lines the Protestants.

Gentlemen, this is the competitive area. Now, in the competitive area I think there is nothing more clear in the world than that the Respondent carriers are faced with terrific competition. Bear in mind now, gentlemen, we are talking about foreign traffic to and from this shaded territory. It is not traffic to domestic destinations, it is not

traffic from domestic origins. It is traffic which is competitive in markets over here, over here, and over here (indicating), foreign markets, without stopping for anything other than transshipment at the ports through which traffic moves.

I think I did not mention that Appendix F of the Examiner's report clearly shows the disposition of this traffic among the various railroads. Bear in mind, gentlemen, again that it is only by making various illogical and actually unwarranted deductions from the total traffic handled by the various carriers that you get to any such figure as 62½ per cent of the traffic moving through New York.

[fol. 2305] The amount of traffic that we are talking about that moves through New York is 25 per cent of the traffic which moves in export-import traffic through the North Atlantic ports.

Now, in making this proposal, the carriers who proposed the equalization realized that they had a burden of proof before this Commission. They realized that they had to establish that the rates were compensatory, that the rates were necessary to meet competition, that they are no lower than necessary to meet competition, and furthermore, that sound managerial discretion prompted this move in order to benefit the various rail lines.

Now, in the first aspect of that, as I previously mentioned at the outset, this is a minimal reduction, amounting to three cents per 100 pounds, on a general area of traffic. That amounts to $12 per car, 60 cents per ton, however you want to break it down. It is a minimum reduction.

These rates were attacked as being non-compensatory on the basis of the reduction. Well, in establishing in our original realization of the burden of proving the compensativeness, we originally presented in our testimony the fact that on First Class traffic, this proposed reduction would still return 7.4 cents per ton-mile on First Class traffic from Chicago to Boston. A comparable figure on traffic from Chicago to New York is 8.09 cents per ton-mile. And we showed the Column 13 traffic would return .95 cents per [fol. 2306] ton mile from Chicago to Boston. From Chicago to New York, Column 13 traffic would return 1.03 cents per ton mile. These are on a class rate basis.

Nevertheless, the opposition attacked the compensativeness of these rates, and they did it in three successive and unavailing attempts. They first came up with a cost study on a fully distributed basis. They realized immediately that that was an improper basis and, by the time of hearing, had put it on a so-called out-of-pocket basis.

Now, this cost study was, of course, reviewed by the Respondent carriers, and it developed that, with the most patent correction of errors in that cost study, the cost study showed ample revenue return to the Respondent carriers.

Now, that was just with the most patent of the errors. There were some ten additional very important areas of error or misapplication of the cost principles which we could not evaluate.

But only with that partial adjustment, the out-of-pocket cost ratio was reduced to 81 per cent.

Now, again I say, gentlemen, this is a very simple proposition in its broad aspect. You can talk about various problems that inhere into this type of adjustment, but bear in mind that we are talking about export-import traffic, through traffic. There is no competition within the United States on this other than via the railroads which are [fol. 2307] attempting to compete for the traffic from and to the Affected Territory.

Further studies by the Respondent carriers developed the fact that, traffic studies for the years 1946 as against the traffic studies commenced in '55 and finished in '56—they were covering a span there of a ten-year comparison—showed that the Respondent carriers serving New York had a decline in this traffic of over 20 per cent. Now, that is why we are here now attempting to equalize our opportunity to compete. Our traffic in that ten-year period decreased over 20 per cent. That was the necessity to meet competition.

Chairman Winchell: Was that 20 per cent decrease in your share of the total traffic, or was it a 20 per cent decrease in the amount of traffic that you had had prior to that?

Mr. Colgren: That 20 per cent decrease was in the traffic of the New York Central, Delaware Lackawanna, Lehigh

Valley, and Erie Railroads, who compared the export-import traffic transported in 1926 with the traffic transported in 1955.

Chairman Winchell: On those same roads?

Mr. Colgren: That is right.

Chairman Winchell: You are not comparing with the total export-import traffic—

Mr. Colgren: No, sir.

Chairman Winchell: —from that area?

That is a direct comparison of those railroads, over 20 [fol. 2308] per cent decline.

Now comes the question of whether the rates are lower than necessary to meet competition. But, gentlemen, how in the world can you say that equality is anything other than a fair basis of competition?

We are not asking for any favors. We are asking for a fair break.

Now, speaking of that 20 per cent reduction in traffic. Now, all of you gentlemen know that volume movements are vital to the railroads in order for them to control their costs, in order for them to attain the efficiencies of which they are capable. This draining away of very compensatory traffic is alarming to the Respondent carriers. We have both aspects. We are not only losing lucrative traffic, but we are losing the volume which permits us to control costs.

By the very nature of export-import traffic, certain port facilities are required to perform the interchange between ships and the rails. These facilities are of a fixed cost nature. They are not something that in times of bad traffic movement you can close up shop or cut them off. They are on our books. They are, as a matter of fact, required to be kept open and functioning regardless of the amount of traffic that goes through them.

But, gentlemen, you can realize that the investment in [fol. 2309] these facilities must have sufficient utilization in order that the costs attendant on their amortization, costs attendant on their use may be covered.

We submit, gentlemen, that we have given this Commission all of the elements of proof which justify the proposed equalization of rates. The record is complete as to their compensativeness. The record is complete that these rates

are required to meet competition. The record establishes that they are no lower than necessary to meet competition. And certainly we will gain the benefits which we hope for by their establishment.

Commr. Freas: Are you undertaking to justify these proposed reductions on any ground other than that of the need, in your opinion, to remove the differential as between the southern ports and New York?

Mr. Colgren: I don't believe I quite understand you, Mr. Freas.

Commr. Freas: Well, you say it is necessary for you to reduce your rates from the northern group of ports in order to be on the same basis as the southern ports.

Mr. Colgren: That is right.

Commr. Freas: My question is: Is that the sole grounds upon which you rely in justification of your rates, or do you have other reasons in addition to that?

Mr. Colgren: Well, frankly, that is our main competition, [fol. 2310] the railroads serving the southern tier of North Atlantic ports. We serve a common territory and transport traffic which is going to a common destination.

Commr. Freas: Well, you are not relying now on competition with the St. Lawrence Seaway, or anything of that nature, are you?

Mr. Colgren: I was coming to that.

In addition to that, this Commission must realize that the railroads serving the northern tier ports on this export-import traffic have the highest scale of rates in this whole nation on foreign traffic. We are on a pinnacle of high rates.

To the south of us are the railroads serving Philadelphia, Baltimore, and Hampton Roads on a lower rate basis. South of that, on the South Atlantic Coast, is still another lower basis. And, incidentally, that South Atlantic tier of ports from Hampton Roads down to Florida are all equalized. The Gulf ports are on a much lower basis, and that basis which I think is still being applied I think generally speaking would be on a ten cents per 100 pounds lower basis than Baltimore rates.

Commr. Freas: What I am trying to find out is whether, in the event, contrary to your contention, the Commission should find that the differential should continue in effect, you would then want the rates to be left on the present [fol. 2311] level, or to have the reductions made from both groups. In other words, whether there were other reasons, other than the differential that would, nevertheless, require the reduction of the rates.

Mr. Colgren: No, sir, not to my knowledge, and I am quite sure that there is not.

This case was predicated on the basis of meeting the competition on this specific traffic, and solely for that reason. I know of no other basis than to put us into a more competitive situation.

Now, you mentioned the St. Lawrence Seaway. I mentioned our competition to the south.

Looking here (indicating), Mr. Freas, the southern lines which reach this territory go directly south to New Orleans at rates ten cents below the Baltimore rates. And our rates at New York and Boston and the other northern tier ports are three cents above the Baltimore rates.

The St. Lawrence Seaway is paralleling our routes on the north. There (indicating) is our St. Lawrence Seaway competition. And that, if you will excuse the expression, subsidized competition is going to eat into our traffic.

But here we sit on this pinnacle of high rates.

We have been forced, gentlemen, much against our will, to join in rates over railroads serving the southern tier ports in order to get a small proportion of the haul that we [fol. 2312] would not otherwise participate in at all.

If there are no more questions at this time, I believe I would like to reserve the rest of my time for rebuttal.

Thank you.

Chairman Winchell: Mr. Moerman.

Argument of Samuel H. Moerman

Mr. Moerman: Mr. Chairman and members of the Commission, my name is S. H. Moerman, and I am speaking this morning on behalf of the State and City of New York, the Port of New York Authority, the Brooklyn Chamber of

Commerce, Incorporated, and the other 25 or so intervenors in support of the Respondent railroads shown on page 1 of the argument notes which I have had passed to you.

Your Honors, more than ten years ago I trudged into this hearing room on the heels of the late Wilbur LaRoe, Jr., who stood before you and pleaded that you permit, or, rather, require—it was a complaint case—that you require the railroads serving New York Harbor to equalize their rates on export grain with the rates applying through Baltimore.

Now, incidentally, while on much traffic the differential is three cents per 100 pounds, on grain it is only one and one-half cents per 100 pounds, on flour two cents per 100 pounds.

Now, in your 1941 decision, you said to Mr. LaRoe, "We are very sorry, but we cannot grant your complaint. Your [fol. 2313] complaint will be dismissed."

And your reason was that you would not force the railroads to equalize rates against their will, you would not compel them to do so. Even though we thought we had made a case in the best interest of the railroads, and time has shown that the case we made was in the best interest of the railroads.

And so it gives me great pleasure to be back here 20 years later and to ask you to grant the plea this time of the New York lines who have come in and have proposed rates and sought the equalization which is very necessary to their economic health and well-being.

Now, not only are they here in connection with this broad rate structure on import and export rates from and to official territory, but after World War II these archaic, sleepy, backward railroads of ours, New York and north in this New England territory and the New York territory, these railroads who are the weakest part of our whole railroad system in the United States have finally shown signs of coming out of their Rip Van Winkle slumber. And the first sign was a proposal to equalize rates on ex-lake grain from Buffalo going through New York in competition with the same rates through Baltimore.

It was a fact that prior to about seven or eight years ago grain moved off the lakes for export, came down by rail past New York's back door and into Baltimore for export [fol. 2314] at rates lower than the same grains would have moved into New York. In other words, the rates through New York were higher.

Finally these railroads, bless their souls, came in and they fought, and the result was, finally, after a bitter battle here, a battle in the courts, back to the Commission, equalization. And all during that case these able men to my left, representing these powerful respondents to the south, argued and cried and pleaded and warned you that if equalization were to ensue they would suffer serious damage.

In the 25 or 30 years that the Port of New York, after World War I, did not have port equalization on grain, and in those years when we began to ship great quantities of grain abroad, we lost our grain facilities. And when we got equalization, it didn't mean a thing. And today it still doesn't mean a thing. You haven't had these people from Baltimore and from Pennsylvania and the other railroads to the south of New York come back to you and say you were wrong in approving equalization for our New York lines. And the fact is the record in this case shows that we have very little grain, and the reason we have very little grain is that you don't handle grain as a railroad if you don't provide fine facilities, and you don't provide fine facilities such as at Baltimore and other ports if you don't have rates that will move the grain.

[fol. 2315] You must have an equality of opportunity, you must have a chance to compete for the business, and people in business will not voluntarily assume a rate penalty for the sake of moving traffic via some lines or favoring some port.

Commr. Freas: Did I misunderstand you?

You are talking now about equality of rates on grain, but in the opening of your statement I thought you said the differential on grain was a cent and a half.

Mr. Moerman: It is presently from C.F.A. The only correction we have had, your Honors, is from Buffalo. We

haven't got any correction from here. We lost this part of the case.

Commr. Freas: I see.

Mr. Moerman: From C. F. A.

That is one of the big issues in this case today. Grain is important. We are not getting it at New York.

Now, the second thing that our railroads, all the time showing a little more life, coming back to life, did, was in 1953 they filed a proposal asking for equalization, seeking equalization on import iron ore rates, three cents a hundred pounds reduction, to meet the Baltimore basis.

Now, in the 200 years we have been a nation we have been prodigal, we have gouged out our iron ore ranges in the Mesabi and near by, and now, in the post-war period there has been a revolution in this country, we have had to turn [fol. 2316] aboard for raw materials for metal ores. And they are coming into this country in the tens of millions of tons. And New York isn't getting any because iron ore will not move from the Port of New York into the big consuming steel mills of C.F.A. territory against a differential of 60 cents a ton. It won't move against a differential of a nickel a ton.

In a recent case Philadelphia was only able to get imported iron ore, your Honors, by achieving equalization. And in that same case, which began in 1953, your Honors finally concluded that, yes, the New York railroads should be entitled to share in this mountain of iron ore coming into this country, and we won our equalization, and our friends from Baltimore took us into a Baltimore three-judge court which, with enthusiasm, struck down your order, nullified it.

So we lost our equalization in the court, but we went to the Supreme Court, and the Supreme Court took a different view, it sent the case back here.

Do you know where the case is today? It is right in this Commission with an Examiner's report. And I think within 90 days, your Honors, I am going to be right back here talking with you about iron ore and seeking to achieve once more the equalization this Commission once voted.

Now, Job sat by the side of the road with sackcloth and [fol. 2317] ashes on his head and lamented, "How long, O Lord, how long?"

Now, how long do these lines, the weakest in the country, have to fight in order to achieve equality, to be able to handle some iron ore, to be able to handle some grain?

Now, how did we get to this situation, how did it all come about?

In the middle of the 19th century, as the railroads pushed their lines to the West, disputes arose with respect to export grain rates. There were rate wars. There was chaos and confusion. It so happens that the distance by ocean from New York to Liverpool is somewhat shorter than from Baltimore and Philadelphia to Liverpool.

Turn, please, if you will, to page 2 of my argument notes, and you will see there a map of the ocean distances.

And it also so happened that the owners and operators of ocean vessels assessed lower rates to New York and higher rates to Baltimore and Philadelphia for service.

And so, after the Civil War, after much discussion and conferences, many conferences, and rate wars, troublous times, the railroads at the three ports, Baltimore, Philadelphia, and New York, got together.

And if you will look at page 3 of my argument notes, in 1877, your Honors, they came to an agreement that in order to effect an equalization of the aggregate through rail-ocean rates, the New York lines would take a penalty [fol. 2318] differential. And it so happens the penalty is three cents on general cargo, one and a half cents on flour, and two cents on grain.

And that is the genesis of the case, this historic case, a landmark case, which brings me here before you today.

Way back then the railroads got together, and it is because of another event, a change in circumstances, such as this agreement that we are considering, contemplating that I am here before you.

Now, in 1935, beginning with the end of the World War and up to 1935, a substantial change took place in the economics of this situation. Ocean rates generally became equalized to and from all North Atlantic ports. No longer was there a difference. And so with an equalization of the ocean rates, you have a loss of that aggregate through equalization of rail-ocean costs, which had always been the purpose and the intent of this import-export rate structure.

Now, this situation in the North Atlantic is an anomalous one. There is not another one like it in the country.

Would your Honors be good enough to turn to page 4 of our argument exhibits.

There you will see on the Pacific Coast the Pacific Coast range of ports from San Diego to Vancouver, British Columbia, 1440 miles in extent, and a red line running roughly through Denver, and east of that line is the competitive territory.

[fol. 2319] And, your Honor, every shipper of export commodities can ship from east of that red line through any port, using any railroad, at equalized rates. And he can import through any port via any railroad, using equalized rates. And every railroad and every port has an equal opportunity on the West Coast.

And so it is on the Gulf. From Corpus Christie to Panama City. And so it is in the South Atlantic, from Jacksonville to Morehead City.

But so it is not in the North Atlantic, your Honors, because, in a sense, the railroads at the ports south of New York have breached and failed to honor the agreement of 1877 and insist and put their best efforts into maintaining a penalty differential against the railroads New York and north. And that is why they are here.

And this is one of the reasons they are weak, bled white by a shift of industry, bled white by trucks and busses and passenger services, and commuter services, and, above all, weakened by a differential which was never meant to be except to effect equalization.

They stand here before you today and they say, "Can we not have what everybody else has in this country, an equality of opportunity?"

And how can you deny them? How can the Pocahontas lines and the powerful lines of the South come here and say, [fol. 2320] "Deny them the equality of opportunity which they seek. Keep them on this pinnacle. Treat them differently from every other set of railroads in the country."

To me this is inconceivable. This case ought not to be here. These rates should not have been protested.

In every range of ports, your Honors, there are differences. Let us take the Gulf for example.

Does the Port of Panama City of Pensacola rank with New Orleans?

Neither does.

Suppose Panama City came in here and filed a complaint and said, "We are not doing so good. How about a three-cent differential under New Orleans for our railroads?"

You would give them a respectful hearing and you would dismiss their complaint. Because what they are entitled to is equality of opportunity, and that is what they have got.

Now, it is up to them to promote their port, to go out and sell their port, to get as much transportation as they can, to invest in port facilities, to do all the things which rugged, independent, busy, effective people do.

Now, this is the converse of that case. Why should the ports, New York and north, and their railroads—the railroads, not the ports, be afflicted with a three-cent penalty? What justification is there for it?

Now, on page 5 of my argument notes I show you the [fol. 2321] total export and import figures to illustrate the fact that, in the more than 80 years in which there has been a mission to the southern ports, in which they have had the advantage of the existing differential, they have come of age. True, these are general figures, but they do illustrate that the mission has been successful and they have gotten religion, they are prime and substantial ports.

But also I should like to say that New York and its hinterland are undoubtedly the largest producing and consuming area in the country. And so, of the 38 million tons there shown, it is reasonable to infer that a great portion of it never moves in or out of the port by a railroad, and is not available to railroads for movement.

But what are the specific figures in this case? How much import and export traffic do the New York railroads have as compared with Baltimore?

I think that you will be surprised if not shocked.

The figures of record show that for the year 55-56, the Baltimore lines handled to and from the Affected Territory five million tons of traffic, and th New York lines handled three million tons of traffic. And to the traffic of the Baltimore lines must be added iron ore and coal, which are

not involved in this case, millions of tons. And so that it can be said conservatively that the Baltimore lines had two and three times as much import and export traffic as do the [fol. 2322] New York lines.

And as to the effect of the differential, what three cents, what one and one-half cents, what two cents can do to a system of railroads, turn to page 6, please, of my argument notes, and there you will see dry cargo tonnages. And the reason these are significant is that, in a big metropolis like New York, we have millions of tons of petroleum moving in for local consumption, which does not move by rail. Petroleum has been taken out of these figures.

And you will see that back in 1935, by which time the ocean rate had become equalized and the necessity for the differential had disappeared, Baltimore handled three million tons of dry cargo traffic. And by 1955, with the differential working for them and against the weak northern tier lines, they had risen to 23 million tons and New York had, by running real hard, barely kept its position.

Now, all we ask for these railroads serving our port is an equal opportunity to share in the growth and the posterity of this country, particularly at a time when they are going backward.

What weaker lines do you have in this country than in this area?

Can the New Haven compare with the Norfolk Virginian, the Erie, the Lackawanna, the Lehigh Valley?

All weak lines and getting weaker.

[fol. 2323] Page 7, your Honors, shows, in a graph form, the history of the movement of dry cargo tonnage.

Now, it will be argued that New York is getting a very large proportion of the so-called general cargo, which is package freight.

This is something else that has happened to our railroads in our area, your Honors. They have become carriers of packages, carriers of commuters, carriers of railway express, carriers of packages. They are not acting like railroads. Railroads carry tonnage, they carry coal, they carry grain, and they carry iron ore, and they carry other ores. Their future does not lie in the carriage of commuters and packages. And if you have any concern, and I

am sure you have, for the future of the railroads in this portion of the country, you will give them that which is the birthright of every citizen of this country, an equal opportunity. And if you don't, as carriers of packages and commuters, they are going to constantly fail and go down. And those who own their stock and their bonds, and those who own their credit are entitled to as much consideration as those who invest in the Norfolk and Western, the C&O, and the B&O.

The future of these railroads hinges on your decision in this case, your decision to give them that equality of opportunity which will permit them once more to look to the future and to operate as railroads. And this is no small [fol. 2324] matter, because the iron ore case will take another three or four or five years. This case will never be decided until after you have spoken and the Supreme Court has spoken. And it will take a decade to equip these railroads with the necessary facilities they need to handle the traffic they need to keep them economically healthy.

So, your Honors, in conclusion, this is not a rate case. This is a case in which the fate of these northern tier railroads is bound up, and their future lies in the resolution of this case and granting to them equality of opportunity to compete for import and export traffic.

Thank you very much.

Chairman Winchell: Mr. Bleakney.

ARGUMENT OF ROBERT G. BLEAKNEY, JR.

Mr. Bleakney: May it please the Commission. My name is Robert Bleakney. I am general attorney of the Boston and Maine Railroad.

I appear before you today on behalf of New England Railroad Respondents, namely, the Boston and Maine, the New Haven, and the New York Central Railroads.

I will direct my remarks primarily to the proposed rates to and from the Port of Boston, Massachusetts.

As to those rates, the issue which you will decide is basically this: Shall the Boston railroads be permitted to compete once again for import and export traffic to and [fol. 2325] from the Affected Territory that Mr. Colgren outlined on the maps which he showed to you.

There was a time when this was so. For example; back in 1912 this Commission found, in the Chamber of Commerce of New York case, cited way back in 24 I.C.C., that at that time of all imports for differential territory through the North Atlantic ports, railroads serving Boston handled something like 16 per cent of the commodity rated traffic. But today, not even the most optimistic observer could say, in any honest sense, that Boston railroads are participating in this traffic to any degree at all.

Let us look at the record.

As Mr. Colgren has noted, the Examiner outlined the participation of the railroads serving the various ports in this important block of traffic in Appendix F to his proposed report.

We have prepared two charts, one of which appears before you, and the other will appear shortly, outlining a comparison of Boston carriers' participation in that traffic as compared with that of the railroads serving the three more southerly ports.

Looking at the first small chart, you will note that the black chimneys relate to the three southern ports. The first chart shows the participation in export Affected Territory traffic. The three southern tier ports during that one study [fol. 2326] year handled over five million tons of export compared with slightly over 360,000 tons through Boston.

That showing is pitiful enough, I might comment, insofar as the Boston lines are concerned, but look what happens when grain is excluded. Boston's participation vanishes to 3,256 tons compared with over 1,300,000 tons at the more southerly ports.

Now let us look at the import picture.

As bad as the export picture was, I suggest that this picture is even worse. The Affected Territory import traffic of the Boston railroads is entirely other than bulk ores, and when I say "other than bulk ores" I should have noted that import iron ore is excluded because the Examiner excluded it in his proposed report, and it is not in this case.

Southern tier ports handled over two million tons of imports of all types compared with that 17,700 tons through Boston, and excluding the bulk ores, over 570,000 tons compared with that same 17,000 tons through Boston.

I think this showing of Boston's participation is eloquent enough in itself to show that really we are not participating, we are not competitive.

By our proposal in this case, Boston railroads seek to at least have a fighting chance. Obviously, under present circumstances, we have no fighting chance whatsoever. [fol. 2327] How has this situation come about? What has happened that Boston railroads and the Port of Boston now find themselves as spectators rather than participants in the movement of this traffic?

How can this be when this differential, as Mr. Moerman has stated, was established to permit free competition through the southern ports, was established to equalize the through rail-ocean cost?

The answer, insofar as Boston is concerned, is the same as that given by Mr. Moerman with regard to New York. The ocean cost advantage that Boston lines once had vanished long ago.

The Examiner found that, starting in the 1920's, the ocean rate advantage at the northern pier ports started to go away, and it had completely gone, had been completely eliminated by 1935.

So for many years now the Boston railroads have been suffering under a railroad rate handicap, the justification for which has long since passed. You have seen the result on these charts.

Now, the Examiner found all of this to be true. He made findings as to the purpose of the differential adjustment. He found that these ocean costs had been equalized. He made these findings on the virtual lack of participation by Boston lines. Yet he nevertheless recommended to this [fol. 2328] Commission that Boston railroads be not permitted to have their rates placed on a competitive basis. He did this for but one reason.

He found that the proposed reduced rates at Boston were presented—and I use his words—or that they did present "only the broad issues concerning equalization of the northern tier ports as a group"—I repeat—"as a group with Baltimore."

He then expressed the view that the Commission, and again I quote, "may not treat the tariff concurrences of

Respondents joining with the Boston railroads as broader than necessary to accomplish equalization of northern tier ports as a group."

Having found that the New York rates had not been shown to be reasonable, a finding with which we do not agree, by the way, the Examiner then felt himself compelled to find that the differential eliminating rates at all of the northern tier ports, including Boston, were unlawful. He felt that if he could not recommend a grant of equalization to New York, everyone was out.

The Examiner was wrong.

There is nothing in this record which gives any support to his conclusion that our rates were conditionally presented or presented interdependently with those of New York. Quite the contrary, the record shows that these rates were presented to be considered on their merits, and we feel we [fol. 2329] are entitled to that consideration.

It may be interesting to note with regard to his comment about Respondents joining with the Boston port lines, that those Respondents, in our general exceptions on behalf of all Respondents, have taken exception to that. It is quite clear that their concurrences were not conditional. The Boston rates should be considered on their merits. Boston lines should not have to prove not only the reasonableness of their own adjustment with the reasonableness of the New York adjustment. That has been quite capably done by the New York railroads. Our burden of proof should go only to the extent of our own rates.

The Examiner's conclusion in this regard is to be compared with the Commission's action in the import iron case, of which we have heard some comments from the previous speaker.

In that case you will recall that the Commission concluded the proposed Boston rates equalized at Baltimore had not been shown to be lawful. However, the Commission did not feel on that account to refuse to deny equalization to New York. It felt, and we feel properly so, that the New York rate there was also entitled to be considered on its merits. We ask only that our rates be given that same consideration in this important proceeding.

If the Examiner had considered the Boston rates on their [fol. 2330] merits, if he had looked at the evidence in support of those rates, he could only have concluded that they should be permitted to become effective. He would certainly have found such rates to be competitively required.

We have looked at the traffic picture at Boston, and I think no one could seriously contend that Boston railroads are now competitive.

This is not a case of declining traffic volume, which would be bad enough in itself. This is a case of traffic volume that vanished long ago. We want to at least be able to try to get back in this competitive picture. We are an outsider right now.

There is testimony in the record of numerous shipper witnesses, of the traffic officers of these Respondents, of transportation experts like Professor Locklin, like Witness Day of the Massachusetts Port Authority, all of which attest to the fact that the present differential stands in the way of Boston lines attracting any substantial share of this traffic.

This differential must be eliminated if we are to compete once again.

Now, some protestants have argued that even if Boston's rate handicap is eliminated, as long as Boston remains on a parity with New York it has little chance of attracting any traffic. I will touch upon this a little more later in my [fol. 2331] argument, as will the representative of the Massachusetts Port Authority following me, but I think it is sufficient to say at this time that the Commission long ago found such a basis an improper one upon which to refuse an otherwise lawful adjustment.

We are entitled to have that chance.

In the Maritime Association of the Boston Chamber of Commerce Case, back in 95 I.C.C., the Commission commented that merely because it might question whether the reduction or the adjustment would be beneficial, respondent should, nevertheless, have the chance to try that out in the crucible of experience.

Not only is this adjustment competitively required, but it is certainly no lower than necessary to meet competition.

In this regard, no southern tier respondent, no southern tier supporting interest, has argued that if Boston is permitted parity that any serious diversion of traffic from their lines would result. No one is worried, as far as the southern tier lines are concerned, with parity in Boston, so far as competitive effect goes.

The only voice that might be construed as complaining about the possible effect of parity at Boston comes from Portland, Maine, in the body of the Maine Central Railroad and the Maine Port Authority.

Now, the interest of those parties is rather unique. On [fol. 2332] export traffic from Affected Territory, Portland is on the same basis as Boston and as New York. On import traffic, Portland is on the Baltimore basis via Canadian routes, and handles some traffic in that direction through Canada by Canadian lines.

Portland doesn't want to compete with Boston. Portland wants to be shielded from competition. And the same applies, of course, to the Maine Central.

Now, the Boston and Maine Railroad, whom I represent, also the Port of Portland as well as Boston. We have experience in handling import traffic to Affected Territory through both of these two ports. There is one commodity handled at both places in some volume, woodpulp.

The Boston and Maine, during the study year in this case, moved nearly five times as much woodpulp to Affected Territory through Portland as it did through Boston, even though it handled 13 times as much woodpulp in total at Boston.

There is only one logical answer to this otherwise illogical situation. The differential exists at Boston, but there are equalized rates via working routes through Canada at Portland. And even the working routes of the Boston and Maine that connect with Canadian lines through Portland are less attractive from a service point of view than those of the Maine Central.

If the Examiner had looked at the evidence, he would not [fol. 2333] only have found the Boston rates to be competitively required, but he would also have found them to be compensatory.

Mr. Colgren has pointed out that Respondent lines pre-
nted evidence showing ton-mile earnings under the pro-
osed rates which, we submit, indicate that they are well
ithin the zone of reasonableness. He has pointed out this
a broad adjustment involving almost every commodity
at either is handled or might be handled by the railroads.
e has pointed out that the reduction, in general, involves
ut three cents per hundred pounds and is of minimal
evenue effect.

This is a broad rate adjustment, gentlemen. Certainly
ost evidence is out of place in a case of this sort because
o meaningful cost evidence can be prepared. Certainly
e cannot go down and work—

Commr. Murphy: Excuse me. Would you repeat that?

Mr. Bleakney: This is a broad adjustment and cost evi-
ence is of limited meaning because no meaningful cost
vidence in such a case can be prepared, Mr. Commissioner.
For this reason, we are talking of future traffic— we are
ot talking about traffic that is moving through Boston and
or the traffic New York seeks.

Commr. Murphy: What is the difference?

Mr. Bleakney: The difference is important because if
affic is attracted, volume increases, costs are affected,
nd any cost study based on average costs, which has been
ol. 233] the attempt of southern tier respondents in this
ase, certainly cannot relate to specific commodities. They
n, however, be of some value in giving an over-all indica-
on of the over-all adjustment.

Our objection is primarily to any attempt to try to say
is is what the cost would be of handling a specific car of
specific commodity.

We took that average cost evidence presented by oppos-
g lines, took it at face value, even though Mr. French
the New York Central pointed out serious overstate-
ents, we took that cost evidence and added to it average
oston terminal costs which were not included. On that
asis it was shown that even on the overstated basis, Boston
roposed rates were between 75 and 82 per cent—pardon
e—the out-of-pocket costs under the Boston proposed
ates would be only 75 to 82 per cent of the proposed rev-
nues.

There has been an attempt to take out of context from that exhibit figures related to specific items of grain traffic. This is the attempt that I was referring to, Commissioner, an attempt just as meaningless as taking a sentence out of a book out of context. This exhibit was intended to show the over-all effect even on that inflated basis. By taking these items of grain traffic, naturally relatively low-rated traffic, respondents argue that Boston carriers will be not able to handle bulk commodities at a compensatory level. [fol. 2335] We submit that this is not so, and that this attempt is unjustified and unwarranted, and is a misuse of the cost evidence presented to this Commission, which was presented for only that limited purpose.

These are average costs that were presented, again I state, not costs related to any specific movement of traffic, to any specific commodity.

These rates would reduce even the lowest rated commodity that could be found, as I recall, crude bauxite ore, by only one mill per ton-mile.

There is one other line of attack with regard to costs taken by southern respondents. That has reference again to Boston's failure to convince this Commission that its proposed import iron ore rate would be compensatory.

There was a case involving a specific commodity with specific cost study evidence. We are unable to find in the record of this proceeding, or in the tariffs filed, any rate approaching the low depressed iron ore rate involved in that proceeding.

We submit that that argument is completely without relevance.

The Commission is reminded that the first case in which railroads themselves sought to equalize rates through the several ports involved a bulk commodity, the same com- [fol. 2336] modity that southern respondents now argue could not be moved at a compensatory level through Boston. In that case it was grain, ex-lake grain. Following the proceedings to which Mr. Moerman referred, that rate was found to be compensatory and not otherwise unlawful, and is now in effect.

There are some other arguments advanced by those opposed to equalization at Boston. First it is argued that if

Boston is granted equalization but New York is not, there would be widespread fourth section violations on routes from Boston to and from Affected Territory through New York.

Please don't be confused by this argument. We have found but one route between Boston and Affected Territory where that might be the case. That route involves the Lehigh Valley and a movement across New York Harbor to the New Haven, and is a very minor route as far as moving traffic between Boston and Affected Territory is concerned.

It would be a simple matter for this Commission to condition its grant of equalization, which we trust it will see fit to do, upon the filing and granting of an appropriate fourth section application with regard to that particular route.

Certainly it seems illogical to argue that Boston lines who publish their equalizing rates at the same time with New York lines, who sympathize with the cause of the New York lines, should have filed a fourth section relief ap- [fol. 2337] plication on some assumption that one would be granted and not the other. But, in any event, it is a minor matter and perhaps should not be overstated.

There is another argument which again relates to the possibilities that Boston respondents might achieve equality while New York respondents do not.

This argument says that that would change the relationship between the rates to New York and the rates to Boston, and it is alleged that that relationship is not in issue in this proceeding.

Well, we submit, your Honors, that the rates at all of these ports are under suspension, the rates at all of these ports are in issue in this proceeding. If Boston needs equalization with Baltimore, and if New York does not, both have been measured against the same standard, their need to compete with the Baltimore railroads.

Certainly the Commission will have thereby come to some conclusion about the relative needs of the lines at the two ports from the competitive point of view, and, therefore, as to the relationship between them.

Those who advance this argument ignore the fact that North Atlantic railroads compete for this traffic not only among themselves, but with the South Atlantic ports and the Gulf ports. No one argues that because any change in the differential might affect that relationship, or alleges [fol. 2338] that that relationship is not now before you, that the Commission should not consider any change in the historic differential adjustment.

There is no serious contention advanced, gentlemen, by any of the parties that the proposed Boston rates would violate Section 3(1) of the Act. In fact, rather than violating that section, this proposal will serve to accomplish its purpose as Congress, in its history of amending that section, revealed, the purpose of encouraging and promoting the freedom of movement of export traffic through the several ports of the country.

You have seen that there is no movement of this traffic through Boston.

This differential will give us a chance.

In conclusion, the Commission should find that the proposed rates are entitled to consideration on their merits insofar as the Boston lines are concerned.

It should find that they are no lower than competitively required and are within the zone of reasonableness.

It should find that they do not violate Section 3 but are consistent with its purpose.

We submit that there is no reason for preventing the Boston railroads from making effective this lawful adjustment. We are not seeking a rate advantage such as that which is enjoyed by protestants ever since ocean rates were [fol. 2339] equalized. We seek only permission to eliminate this long-standing rate handicap. We want to have a fighting chance once more, and we pray that this Commission will give it to us.

Thank you.

Chairman Winchell: We will take a fifteen-minute recess.

(Short recess.)

Chairman Winchell: Mr. Foley.

ARGUMENT OF HENRY E. FOLEY

Mr. Foley: If the Commission please:

The record is clear that the total cost of the through ocean-rail movement of export and import traffic determines the routing by shippers of virtually all bulk traffic. And, absent offsetting service advantages, cost determines the routing of virtually all other traffic.

Professor Locklin, at one time Principal Transportation Economist of this Commission, now with the University of Illinois, was a witness in this case, and he put the point this way: " . . . bulk traffic and low unit value traffic will not move against a rate differential. High unit value commodities sometimes move over other than the lowest cost routes, but only when there is a distinct service advantage."

And the origin of the differential adjustment attests the truth of this. The differentials were originally established, as you have been told and as the Examiner found, to equalize the through ocean-rail cost to shippers regardless [fol. 2340] of the North Atlantic port through which the shipment was to be made, the rail differentials favorable to the southern tier ports being intended to offset what was then the ocean differentials favorable to the northern tier ports.

Thus, through ocean-rail cost equalization was designed to enable effective competition.

And the history of traffic movement through the Port of Boston also shows this. When equal through rates prevailed at North Atlantic ports, Boston significantly participated in Affected Territory traffic. Thus, when ocean-rail cost parity existed, this Commission was able to find in 1911 that Boston's share of commodity rated traffic moving to Affected Territory was 16 per cent. And in a later case, the Maritime Association case, this Commission said, with respect to Boston export movement from Affected Territory: "Boston has largely relied for bulk cargo, upon the grain and flour which it has been able to draw from the West."

Thereafter, ocean rates to the North Atlantic Ports became equalized. As the rail rate disparity continued, how-

ever, the cost of shipping became greater through Boston than through Baltimore and the other southern tier ports and, as a result, virtually no export-import Affected Territory traffic moves through Boston or via the Boston railroads.

Now, I have here a series of charts drawn from Appendix F to the Examiner's report showing the tremendous [fol. 2341] imbalance of movement through Boston as compared with Baltimore.

In the first one, as you will note, taking the total traffic, that 4.4 per cent of the North Atlantic Affected Territory tonnage goes through Boston, 4.4 per cent as against 40.4 per cent through Baltimore on exports. And on imports, almost one half of one per cent goes through Boston and 58.8 per cent through Baltimore.

Now, if you will look at the next one, total imports, you will see that Boston's share is infinitesimal, Baltimore's share is more than 90 times Boston's. This isn't like it was when there was through cost equalization.

Total exports, again Baltimore's share is more than nine times Boston's.

Look at bulk ore imports, if you will. Boston got nothing there, and Baltimore got 1,350,000 tons. So we weren't in the running.

Grain exports, the last of this series, Baltimore's share was 6.5 times Boston's. And it was during this period, as the record shows, from which the Appendix F figures came, that there was an absorption by the Federal Government of the differential, and, therefore, we got some grain through here. This reflects a chance to be competitive, but Baltimore is still six and five times our share.

So, gentlemen, these things dramatically, it seems to me, portray the Boston carriers' need for the Baltimore rate. [fol. 2342] About 60 per cent of Affected Territory export-import traffic is bulk, 60 per cent, about, and this traffic is increasing percentagewise, as the Examiner found.

Now, without parity rates, Boston has no chance of attracting this essential bulk traffic. Baltimore, with its rate advantage, has a stranglehold on it. Even New York, even New York can get little of it. This is why Boston has no real quarrel with New York or New York with Boston. Our

quarrel is necessarily with Baltimore. Baltimore, with its rate advantage, has a virtual monopoly on Affected Territory bulk traffic so much needed by Boston. Boston, of course, without parity, has no chance at general cargo because this traffic is not only subject to a cost disadvantage compared to Baltimore, but Boston has no service advantage over Baltimore to compensate. Without parity rates, Baltimore will inevitably continue its dominance, and Boston will simply not be in the running.

Boston is even losing to New York general cargo which originates in New England because Boston cannot attract the necessary quantity and diversity of sailings. It does not have the available bulk cargo which ships require.

Now, this doesn't make New York our real competitor. What we need is Affected Territory bulk traffic. It is not available in New England. In order to hold our New England traffic. And Baltimore alone, not New York, dominates this bulk cargo.

[fol. 2343] For years since ocean rate equalization Boston has hoped for parity rates with Baltimore. It has been restrained in its efforts to get these by the fact that until now, as Mr. Moerman has pointed out, the carriers have not been ready to take up the competitive struggle and publish the Baltimore basis of rates, and by the rule the carriers cannot be compelled to be competitive. Now, however, the Boston carriers want to be competitive. They need this traffic for their subsistence. For the first time since equalization of ocean rates the Boston carriers seek rates which will give them a fair chance to compete. This is their first chance since through cost equalization was broken, this is their first chance of breaking through the Baltimore stranglehold on the traffic the Boston carriers need. And we look to this Commission to give us this chance for survival.

Mr. Bleakney has shown you that the Boston rates are compensatory, we deal with it in our brief, and I shall not duplicate him on this.

With the need of the Boston carriers as clear as it is, what then are the reasons urged for denying them an opportunity to compete?

First: The Examiner did not feel it necessary to consider the competitive need of the Boston carriers because he thought that this need was not intended to be met under [fol. 2344] proposed rates unless the New York carriers were to have parity. He ruled that the Boston and New York rates as published had to stand or fall together, and hence that, if the New York rates could not stand, the Boston rates must fall with them. In this he was plainly wrong.

Added to this specious argument is the equally specious related one that to allow Boston alone to have parity with Baltimore would be to allow the Boston-New York relationship to be disturbed and that such an issue was not tried in this proceeding.

This argument is not advanced by the New York carriers, but only by the southern tier interests, who have no basis for complaint as to the relationship between Boston and New York. The New York carriers know that Boston rates on the Baltimore basis cannot hurt New York, for New York cannot without parity have any opportunity to compete for bulk traffic and without parity can only compete for such general cargo as is not cost sensitive, that is, it will pay for service advantages.

The fact, however, is that neither in form nor in intent are the tariffs linked together. Mr. Bleakney pointed that out to you, and Mr. Colgren indicated it in his Exceptions on behalf of all the Respondents.

Actually, the case was tried and briefed on the premise that the Boston and New York rates were independent of [fol. 2345] one another. Counsel for the New Haven stated positively at the hearing that the Boston rates stood by themselves regardless of the Commission's disposition of the New York rates. When the Examiner asked at the hearing, after that statement, "Is there any question now in view of that statement?" no one expressed the slightest dissent.

If the New York rates are needed to enable the New York carriers to compete effectively for Affected Territory traffic, they should be permitted to go into effect. We are inclined to believe that they need them. If they are not needed, they should be disapproved. But even if it were a

fact that New York might not need the Baltimore rates to be competitive, and, again, as I say, I don't believe that, or that it might be overcompetitive on the Baltimore basis, the Boston carriers ought not to be prevented from having parity rates with Baltimore when such rates are clearly needed by the Boston carriers if they are to have any chance of competing with the Baltimore carriers for either bulk cargo or for cost sensitive general cargo. So far as New York is concerned, if it doesn't need parity to compete with Baltimore, it certainly doesn't need parity to compete with Boston.

The protestants next say that the parity rates of the Boston carriers should be condemned because Boston, even if it has parity rates with Baltimore, will not be an effective [fol. 2346] competitor against New York for general cargo and that, insofar as bulk cargo is concerned, the proposed rates are shown by an alleged cost study of the Boston carriers to be non-compensatory.

Now, both of these contentions are unsound.

Any claim that the Boston carriers would not move traffic were their rates on the Baltimore base is actually irrelevant. This Commission said of a similar contention many years ago, in the old Maritime Association case, and I quote: "Boston is fairly entitled to equal opportunity. . . . Conceivably it may not avail itself of this opportunity, but we are certainly not justified in forecasting a failure in this respect and still less are we justified in using such a forecast as a reason for withholding what we would otherwise accord."

Actually, there is no reason why Boston, with parity rates, would not be an effective competitor of the Baltimore carriers. Boston has adequate services and facilities to handle large volumes of movement. During the ten-year period from 1946 to 1955, 44 million tons of imports alone moved through the port, and in 1956, a total of 6.4 million tons moved through Boston. Moreover, Boston participated to the extent of over 20 per cent in the movement of Government export grain from Affected Territory in 1957 when the Department of Agriculture was absorbing the differential.

The claim that the Boston carriers' cost data indicate [fol. 2347] that parity rates on bulk cargo would be non-compensatory is without substance, as Mr. Bleakney pointed out. There was not such a showing. The data referred to by protestants supplemented the Baltimore carriers' Heywood study, though without correction of that study, so far as average Boston port terminal costs are concerned. The figures were offered to show, and they can only show, and your cost section will tell you this is plainly correct, that if the Heywood study were accepted as reliable, then, overall, the proposed Boston rates are clearly compensatory, and by a large margin. The study was not intended to, and cannot, show the costs of any type of traffic, since it deals only with average costs of all types of traffic.

The remaining contentions of the protestants must have been made with tongue in cheek. These are the contentions to the effect that the Boston carriers may not lawfully publish parity rates with Baltimore since distances between Boston and Affected Territory are, speaking generally, greater to Boston than to Baltimore, and, too, that if the Boston carriers should be allowed the Baltimore basis of rates, and New York should not, there would be widespread —imagine that—widespread Fourth Section violations.

Dealing first with the claim of distance disregard, it should be remembered that this is a case where the Boston carriers are themselves voluntarily seeking to disregard [fol. 2348] distance so as to have a competitive opportunity, and properly so, for, as the United States Supreme Court said in the Texas & Pacific Railroad Company case: "The theory of the Act is that the carriers in initiating rates may adjust them to competitive conditions and such action does not amount to undue discrimination."

Actually, distance disregard is necessarily inherent in virtually all competitive adjustments; otherwise the carrier with the shorter route would in every case have a monopoly, unless there was congestion, but in virtually every case.

The protestants well know this. They, themselves, as appears in the few charts that I have now, they show that the protestants participate in export and import rates to

and from Affected Territory which involve far greater distance disregard than is here proposed by the Boston carriers.

Now, this one shows you a 100 mile difference between Boston and Baltimore from Milwaukee, and yet there are equal or lower rates at the South Atlantic and Gulf ports, and you see here Corpus Christi, 1341 miles, you see a 500 mile disregard in that and a 300 mile disregard in the Jacksonville.

This same thing is told by the story of Chicago, comparing Corpus Christi and Jacksonville with Boston. The same story is told with regard to Indianapolis.

These are samplings from the area we are here dealing with. And the same thing is true as to Cincinnati.

[fol. 2349] So it is just nonsense for them to come in here and tell you, "Oh, look at this tremendous disregard." Why, they are participating in far greater disregards, and no one ever thought it was improper where it is competitively necessary.

Now, the outrageous claim, and I mean this literally, of widespread Fourth Section violations should Boston be permitted the Baltimore basis, while New York was not, is fallaciously buttressed by irrelevant language from the old Lighterage case, where rates of the Baltimore and Ohio and Pennsylvania, not here in issue, were involved. The fact of the matter is that only a Lehigh Valley routing, which you can see down here in red, only a Lehigh Valley routing available to and from Boston would involve any Fourth Section problem were Boston's rates lower than New York's. This one routing involves movement via the Lehigh Valley to Jersey City, then across the harbor, and then via the New Haven to Boston either directly or via the Boston and Maine at Worcester. Now, this is actually but one Lehigh Valley routing, and the routing need not be used. If the Lehigh Valley would turn over its traffic to the Lehigh and Hudson River at Easton, Pennsylvania, fo. delivery to the New Haven at Maybrook, an obviously shorter movement, no Fourth Section problem at all would be involved.

The one routing which here poses any question is, of course, no barrier to granting the full relief sought by the [fol. 2350] Boston carriers, subject to the making by the

Lehigh Valley and the granting by this Commission of a Fourth Section application to retain its long haul via Jersey City.

And this (indicating) shows virtually the same thing, and the final one shows the New York Central, plainly involving nothing resembling Fourth Section.

There is here presented to you, gentlemen, a case where the Boston carriers have published rates which are admittedly required if they are to have an opportunity to restore their old competitive position with the Baltimore carriers for Affected Territory traffic.

This is the first time the Boston carriers have voluntarily sought, in an over-all rate proceeding, to meet their Baltimore competition. They did on the grain case and, of course got equalized rates. This is the first chance the Port of Boston has had of sharing in the movement of the vast reservoir of Affected Territory traffic. The port of Boston needs this traffic not only for its own sake but also to improve steamship services at Boston and thus to hold its own hinterland general cargo tonnage.

If Boston is here defeated in its effort to be competitive, this is the end, gentlemen, of a great port.

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[fol. 2427]

REBUTTAL ARGUMENT OF ROBERT G. BLEAKNEY

Mr. Bleakney: I might say somewhat facetiously, at least, no one accused the Boston lines with having gorged themselves with traffic at any time. In fact, there seems to be some sympathy at least voiced by those opposed to the Boston equalized rates, and our opponents seem to have expressed pain, you might say, in feeling that even though they are sympathetic to Boston they feel the Commission [fol. 2428] nevertheless can't grant Boston competitive equality.

I suppose you can take this position especially when Boston doesn't participate in this traffic any longer.

It is argued, however, that even though there might be some sympathy for Boston, even though the Boston railroads may no longer be participating in this traffic, Boston

is all of a sudden too far from affected territory to even be considered one of the North Atlantic ports any more. This wasn't true back in 1877 when this adjustment was first entered into. Back then when Boston had an ocean rate advantage our more southerly competitors were quite delighted to have rail rate disadvantages imposed so they might compete with the Boston railroads. But now they want to throw us out in the cold, the cold that my friend from Portland and the Maine Central talked about, and let us competely wither away.

We submit that Boston is still one of the North Atlantic ports, and still entitled to compete for this traffic.

Commr. Walrath: Mr. Langdon answered my question that apparently your southern friends brought out the cost of operation.

Mr. Bleakney: That was based upon an alleged showing in our own exhibit insofar as grain is concerned. Let us be clear on this. There is no cost study on grain, as such, in this case. No one conducted any analysis whatsoever of the costs to Boston railroads of handling grain from af- [fol. 2429] fected territory or anywhere else to and from Boston, but essentially to Boston since this is export. The so-called study and the testimony of Witness Cole was based on the testimony initially of our opponents' witness Heywood. In his exhibits he took certain allegedly representative commodities moving through the North Atlantic ports, and merely assigned to them, based upon their weights and other factors involved in Form A, eastern district average costs. He then compared costs on that basis with the revenues on the proposed level.

Witness Cole didn't at any time, certainly during my presence in this hearing, unless my recollection is terribly in error, adopt the Heywood study as determining the cost on any particular commodity. He merely completed it on the basis that even if you take that study at face value it shows that on an overall basis, rather than on a commodity by commodity basis, that the Boston rates are compensatory.

The Commission will note that Witness Cole's exhibit shows that even by using Heywood's figures, uncorrected, the out-of-pocket costs of handling this traffic to and from

Boston ranged somewhere between 75 percent and 82 percent of the revenues. That is the sole purpose and intent and meaning to be derived from that exhibit, and to take these grain figures out of context is not only unfair but misleading, we submit, may it please the Commission.

Now, it is said again that Boston railroads aren't entitled [fol. 2430] to parity should the Commission decide to deny parity to the New York lines because Boston is farther than New York from the affected territory, and it just wouldn't be right for a port farther from the affected territory to be at lower rates than one nearer. That argument ignores some charts and some arguments presented to you by Mr. Foley earlier today. You will recall from Indianapolis, Chicago, Cincinnati, and Milwaukee some of the very opponents of Boston's parity proposal here published rates on import-export freight to Houston and Corpus Christi, rates on a level lower than those to Boston and in some cases even lower than those to Baltimore where the distances are considerably in excess not only of Baltimore's distances but of Boston's distances.

In a relationship proceeding, in a competitive rate proceeding which this is, the determining factor is, what rate level is necessary for free competition? We weren't looking for any allocation of freight as has been suggested. We just want the chance to compete, and no one has said we are competing now.

We submit that the Boston rate should be permitted. In passing, I would like to make one comment with regard to Portland. I think the argument on behalf of the Maine Central clearly indicates that the Maine Central doesn't want competition. That is the last thing they want. They want to be protected from that competition that we seek.

May it please the Commission, we pray that the Boston [fol. 2431] rates be granted.

Rebuttal Argument of John H. Colgren

Mr. Colgren: Mr. Commissioners, I have no doubt that you are thoroughly confused at this point as to what is the issue in this proceeding. I admit that I found some question in my own mind, listening to the protestant railroads and their supporting port interests.

Gentlemen, it will be my purpose here to try to get the situation back on the track as to what is at issue. Let us look again at this map which was prepared to demonstrate to you what the competitive territory is, who serves it, and what the competitive influences are.

Gentlemen, the red lines here show the coverage and access to the affected territory of the respondent railroads who want to equalize the rates on traffic from this territory through the ports to a common foreign destination. Look at how this area is laced and interlaced by competitive lines who offer transportation to the shippers in this territory at 3 cents a hundred pounds less than do the respondents through not only Philadelphia, Baltimore, and Hampton Roads, but two of the most powerful of our opponents even serve New York.

You heard this afternoon some talk about percentage of traffic handled at New York by the respondent railroads. Reference was made to Appendix F. Let us look at Appendix F for a moment, if you please. The Examiner quite [fol. 2432] clearly set out the participation in the traffic at New York. You will note that in both tables, of export and import traffic, he broke down the traffic studies as between respondent and the protestant railroads.

Out of this somewhere around—I think I said 25 percent this morning—27 percent of the traffic which the New York railroads participate in, the protesting railroads, mind you, transported about 30 percent of that traffic to and from New York.

We are asking for an ability to compete on equal terms on traffic which is decidedly competitive, which requires an equality of rates.

Again, I want to revert to an earlier figure I gave you, and that was the amount of traffic that the respondent railroads had lost in the 10-year period. Now, when I say "lost," I am not saying lost in the same sense that my friend Hanifin said "lost" during his presentation to you. I am talking to you about a decrease in traffic. A decrease in tonnage.

Over 20 percent of this export-import traffic was lost. Our traffic decreased. Our trains hauled less cars. Our facilities were less utilized. Our lighters, and so on, if you

please, were lighter loaded. My friend Hanifin, on the other hand, wasn't talking about loss of traffic, he was talking about traffic which in a competitive situation moved through another port, then Hampton Roads.

[fol. 2433] Commr. Murphy: He was talking about short haul, was he not?

Mr. Colgren: No, I don't believe he was talking about short haul.

Mr. Commissioner, let me point something out to you: In 1949 this Commission approved the acquisition by the C. & O. of the Pere Marquette Railroad, which is everything above Toledo, on the C. & O. Railroad. It shows better, I think, on map No. 2. There is more mileage via the C. & O. —via the Pere Marquette that the C. & O. acquired only as late as 1949, as there is in the rest of their service in the affected territory.

They spoke of the traffic from lower Ontario. Gentlemen, the Pere Marquette for years and years and years naturally and historically wanted their long haul and their natural route was through Buffalo, either New York, Philadelphia, or Baltimore, through the Buffalo gateway. And just as naturally, via Canadian lines through Montreal. To come in and try to persuade the Commission that by reason of New York's advantages—and I will talk about those in a minute—the traffic in Montreal should move westward to Detroit, directly south some several hundred miles, and finally turn east and go to Newport News, is just ridiculous from a routing standpoint.

I am not decrying that the distances are meaningful in a broad general adjustment like this, and in areas of this [fol. 2434] sort, but I am telling you that the stories are coming to you about traffic origins with traffic being turned over to other ports has another side to it.

Let us talk about the exhibits Mr. Langdon was referring to. If you took the same Exhibit C that he referred to and started at the tail end of that exhibit, gentlemen, and started reading, not the commodities, but read the column entitled "Tons," with respect to the types of traffic, you will see where the traffic is moving. And who in the world cares whether we handle 5,000 different kinds of traffic, if

it is one pound of handling as against one type of traffic, one specie of traffic, one commodity at millions of tons?

This is a real competitive situation.

Mr. Langdon held forth at great length concerning the tremendous sums of money being expended in the New York harbor area by the City of New York and by the New York Port Authority. Gentlemen, they are lovely people, and they are spending a lot of money. But that hasn't added one darned cent to the coffers of the New York Central, the Erie, the Lehigh Valley, or the Lackawanna. It can't. We are talking about something else here. We are talking about traffic coming to and from Central Freight Association Territory.

The facilities the Authority is building at New York are in no sense related to that railroad traffic.

[8]Chairman Winchell: Mr. Colgren, you stated in your [fol. 2435] opening argument that the rates to and from New York were compensatory. I understand Mr. Langdon and others dispute that. Under this proceeding you have the burden of proof. I am not sure that I am clear as to the extent to which that should be sustained.

Mr. Colgren: I intend to spend quite a bit of time on that and I might just as well get into it right now.

You see, Mr. Langdon made these assertions, as did the other opponents, but he never cited you any factual data. Now, I will cite you some facts with respect to the compensativeness of these rates.

Our opposition, as Mr. Langdon said, made certain cost studies. Now, they made the studies at New York without intending to impugn any bad faith, particularly—it should be remembered that they were out to prove that the costs at New York were higher than at any place else. And, gentlemen, they went about it in a form that did. But they failed to take into account certain things. They never matched up revenues with the traffic they were talking about. This cost study which purportedly showed how the respondent railroads miserably failed to show the compensatoriness of their rates is worked down to an average cost per ton and an average cost per car in the New York area, and that average cost per ton, or average cost per car,

was applied against individual commodities regardless of how it moved, when it moved, under what conditions it moved.

[fol. 2436] Gentlemen, the same cost was applied to feathers and lead, and out of this came a cry that the rates were not compensatory.

Now, at that stage the respondent carriers took their very statistics and applied the actual revenues per car on the movements to and from representative points chosen by the opposition, and came up with this interesting result: The revenue per ton on import traffic through Baltimore returned $8.12. On export traffic the revenue return was $9.38 per ton.

Now, Mr. Langdon just a few minutes ago said there was a difference of $6 or $7 per ton in cost New York over Baltimore. These are the revenues on actual rates, on the actual movements in the traffic involved in this proceeding.

At New York: Import traffic, $19.20 per ton; export traffic, $18 a ton. The difference in each event—that is both export and import—of well over the $6 or $7 in cost at the two ports.

Now, mind you, there was an endeavor on our part to show the Baltimore interests. You say your costs are so much, and your rates are compensatory. You say our costs are so much, but here are our revenues. Our revenues well cover our costs, on your basis. And we certainly didn't agree with their basis, as I will demonstrate to you now.

You see, in their ambition to show the non-compensative-[fol. 2437] ness of rates at New York, the opposition first came out with a cost basis on fully distributed costs. That never even got to hearing, actually. Prior to the hearing, at which cross-examination was to be made, they substitute an out-of-pocket basis by merely taking 80 percent of those purported fully distributed costs, without adjustment; without adjustment we took those figures and showed that the ratio of the out-of-pocket costs to revenues was under 100 percent. In other words, they were compensatory right there.

Well, when we got to analyzing the costs, themselves, and what was the make-up of those costs, we found as I

said this morning, some eight or nine pages of errors. I mean, things that we could pick out and evaluate.

On the basis of making those corrections that we could evaluate and put a money value on, the ratio of out-of-pocket costs to revenues came down to 8.9 percent—

Commr. Freas: You are criticizing the cost showing made by the opposition?

Mr. Colgren: That is right.

Commr. Freas: Under this suspension proceeding you have the burden of affirmatively showing that these rates are compensatory. What does the record show in that regard?

Mr. Colgren: The record shows affirmative testimony to the effect that this traffic in our traffic study, for the year 1955-56—the total year traffic, the return to the respondent railroads on the basis of revenue as assessed—there is taken [fol. 2438] right from the traffic study, the waybills, $17.14 per ton. Revenue per ton-mile, 2.29 cents. Revenue per car-mile, 51 cents.

Now, Mr. Freas, by any standard of the Commission those are compensatory rates. By any standard.

Commr. Freas: It depends entirely on what the costs are. We have heard a lot of extraordinary costs in this particular area, now.

Mr. Colgren: Well, I hate to sound as though I knew anything particularly more than anybody else about it, but in my opinion, Mr. Freas, harbor traffic is no more expensive than switching at any large industrial city.

Commr. Freas: That may be, but my question is whether or not the record shows it.

Mr. Colgren: No, it doesn't show it.

You will be interested, I think, in reading the request that Mr. Langdon mentioned, a petition to this Commission seeking us to or requiring us to make a cost study. On the basis of these returns we didn't feel it was necessary to go into a cost showing.

Commr. Murphy: Does Mr. Perlman agree with you?

Mr. Colgren: I am coming to that, too.

Now, I left out an important additional factor in connection with these additional returns I was reading to you. That is for an average haul of 747 miles. More than double

[fol. 2439] the average haul at which rates like this are deemed not only compensatory, but well above out-of-pocket cost bases. And on a tonnage per car of only 22 tons. All these factors indicate that this traffic is indeed revenue producing traffic.

I might say that this showing was prior to the 6 cents per ton charge that was authorized by this Commission in the 212 proceeding, on waterborne traffic. With the addition of that additional revenue these figures would indeed be—

Chairman Winchell: Is that charge still in effect?

Mr. Colgren: Yes. Six cents a hundred pounds on waterborne traffic. It was authorized in Ex Parte 212, and has been in effect since that time.

As a matter of fact, I would like to make an observation. Mr. Freas, this I think may help to answer the question you have in mind.

One of the people who worked on the cost study at New York which was made for the railroads by railroads which serve New York, the Pennsylvania and the B. & O., and they given figures by the Central of New Jersey.

Now, in cross-examining one of the people who worked on those figures, at record page 2229, he said, and I am not quoting him but he said that this six-cent charge, if authorized—and this was prior to 212, when it was in the mill—if authorized by the Commission would put the railroads at New York in a sound position insofar as this traffic is concerned.

[fol. 2440] Now, at this point where we had taken the cost studies—you seem to be puzzled, Mr. Freas, on whether or not there was a cost study made at New York. There was this cost study made by the opposition, and, as I demonstrated, it carried in it certain overstatements of cost which we sought to correct as well as we could. And on the basis of those corrections, and so on, we demonstrated that the revenues would be well above out-of-pocket costs.

Now, after we reached this point in the record where we had taken the opposition's cost study and their testimony with respect to this type traffic, and so on, when it was established that the so-called Heywood exhibits didn't accomplish what they were prepared to do, the protestant

railroads requested additional time—in fact, an additional hearing because the record at this point had come to a conclusion, but they were granted additional hearing on the promise, mind you, that they would come up with definite and supportable data that would establish their claim as to the non-compensativeness of the New York import-export rates.

You might be interested in the record citation on what they would come up with in this additional hearing, six months later. It is page 2051.

At the resumed hearings protestant railroads came up with a very strange and unusual cost study. Mr. Langdon said something about it today, and told you why he thought [fol. 2441] they had the right to apply this solely related cost theory in connection with this traffic.

Gentlemen, the whole thing was completely refuted in Witness French's Exhibit 113, and I commend your attention to that in the event you are still dissatisfied with the revenue and cost showing that I have just described.

Well, this strange application of solely related costs was entirely unsupportable, and everyone said it was so demonstrated at pages 2088 to 2228 of the record. Rather extensive cross-examination, but I had a reluctant witness.

Thus, gentlemen, I can state unequivocally that we have established to anyone's satisfaction that these rates were compensatory, and we took exception to the Examiner not making a finding to that effect.

Now, I can't leave this subject without reference to the appendices that my friend John Hanifin spoke about. At page 66 of his reply where he starts talking about the appendices that he attached thereto, he started variously characterizing those appendices as "not contravened," "unrebutted," "Unchallenged," "unassailed," "not questioned by the rail lines favoring equalization," and he later describes his appendices as "telling evidence."

Gentlemen, the basis of those appendices were the Heywood exhibits that I just demonstrated to you were torn to ribbons by the respondent carriers.

[fol. 2442] Incidentally, the Chesapeake & Ohio, and the Norfolk & Western, would appear to be espousing a cause here, a theory which would require not only different rates

on competitive export and import traffic to and from each port, but they would mean different rates for each railroad transporting such commodities to the same port. I am sure you will agree with me that such a principle would throw aside all theories of competitive rate making and contravene both Congressional and public policy. It certainly has no support in any I.C.C. determinations to date.

Oh, yes, the $10,350,000. I objected when that newspaper article was sought to be introduced in evidence, and I objected on the basis it was completely unrelated to anything under discussion or under consideration in this proceeding, in I. & S. 6615. As a matter of fact, I didn't even know the basis for the figure, and I am sure I would have had it had anything to do with port costs. I subsequently, of course, did inquire into the genesis of this $10,350,000 and discovered that one of our men—not a cost man, but a man who made periodic studies—and they are going on constantly on the New York Central in all phases of our operations—had made a study of the west side operations on Manhattan. Gentlemen, more than a majority—in fact, almost exclusively, this export-import traffic is handled through Weehawken, which is across the river. There is very little lighterage or car floatage conducted from the Manhattan [fol. 2443] side of the river. Export-import traffic just isn't handled there, and that is the subject of this proceeding.

Of course, I may as well tell you what happened about the $10,350,000. We have since then abandoned Pier 34; we have since then ceased operations at Barkelly Street Station, and we are in the process of closing down our St. Johns Street operation, all of which were very expensive operations, and traffic handled through those facilities no longer justified their existence. That is the $10,350,000.

I hardly know what to say, frankly, about this whole line of argument that you have heard since noontime. It certainly never ever got around to talking about traffic which originated or was destined to the C.F.A. territory from foreign origins or destinations. It talked about ports, and, gee, we on the New York Central, on the Erie, on the Lehigh Valley, on the Lackawanna, on the Boston & Maine, and the New Haven, and the Delaware & Hudson Railroad, want an

opportunity to compete for traffic that is draining away from us. We are losing it. The facts all justify that. The record is replete with not only our own comparative studies, 1946 versus '55-56, establishing over 20 percent decline in this subject traffic, but that is corroborative of testimony taken from the Army Engineers statistics which showed a diminution in the total traffic moving through New York port.

[fol. 2444] These figures compliment one another. They are cumulative. They prove something. They are not to be ignored, and, gentlemen, they were ignored in the Examiner's report.

Mr. Langdon frankly admitted that New York was slipping. Part of that slipping is our traffic, and we want to have a chance to get it back. We want a chance to get some more if we can. We have got to have increased volume. We have to stop the decline; we have got to try to develop more traffic.

One other thing. The statistics may not—I myself may not have been talking quite plainly about it. I want to draw attention of the Commission to the fact that Appendix F figures show a little footnote excluding—footnote 1, "Other than iron ore and concentrates." Now, that means, gentlemen, we are not talking about—this isn't iron ore excluded in the center column. That is another commodity. The New York Central handles thousands of tons of other ores. Why should that be excluded from this appendix? We handle sulphur, we handle bauxite, nickel, manganese, chrome ores, at Weehawken. Direct ship to car transfer. That shouldn't be excluded from there. There was nothing in this record that indicates we weren't concerned about ores. Certainly iron ore itself was a subject of another proceeding, but I don't see how you gentlemen can ignore the fact that over two million tons of iron ore moved through Philadelphia and Baltimore to points in this affected territory, in only about seven points in that [fol. 2445] territory. That is found in your iron ore proceeding. I would be willing to guess—probably it is just as well to guess; maybe I shouldn't say it, but there was a heck of a lot more in that C.F.A. territory than that two million tons. We would be interested in transporting that.

Mr. Freas, in connection with the cost study that was made this was the type of thing that we found wrong, and why we alleged it was an overstated cost statement. Protestants studied a subnormal week for some of their data. The Pennsylvania Railroad import-export cars switched during the study week were calculated to be about 58 percent less than the average week in 1956; 58 percent. This is a legitimate criticism, I think, of a cost study.

Protestants used 145,760 tons in September, 1956, whereas the average month in 1956 was about 190,000 cars. That is 145 versus 190.

The B. & O. statistics developed they had about 26,500 tons per month, according to 1956, but the study only covered 11,647 tons in September, 1956. Those were the legitimate criticisms we made of the gross overstatements of the costs of New York. That is just part of the justification for the feeling I have within myself that harbor operations are not necessarily any more expensive than the average costs of switching in a highly industrialized, large city.

I think, gentlemen, I have covered the high points in what [fol. 2446] is in essence a simple proposition, but with many complicated factors. I don't deny that there are these complications in this proceeding. Nevertheless, I think that it sums up to this end: We proposed rates on competitive traffic in order to meet competition which was established by the fact that we were losing traffic to other ports via the railroads that served them, from and to the same territory. We recognized our burden of establishing their competitiveness, and did so in the first instance by a prima facie showing of the returns which would be by any valid comparison accepted as compensatory rates.

I think we bore our other burden of establishing competitive necessity, and the fact that they were not lower than necessary to meet competition.

I thank you, gentlemen, for your attention, and I am sure you will see things my way.

Chairman Winchell: That concludes the oral argument. The Commission will take the matter under consideration.

(Whereupon, at 4:45 p.m., the oral argument was closed.)